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PANAMA CANAL TREATY

(DISPOSITION OF UNITED STATES TERRITORY)

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON SEPARATION OF POWERS

OF THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

NINETY-FIFTH CONGRESS

FIRST SESSION

PART 2

JULY 29, 1977

Printed for the use of the Committee on the Judiciary

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PANAMA CANAL TREATY

(DISPOSITION OF UNITED STATES TERRITORY)

PART 2

FRIDAY, JULY 29, 1977

U.S. SENATE,
SUBCOMMITTEE ON SEPARATION OF POWERS,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to recess, at 8 a.m., in room 6202, Dirksen Senate Office Building, Senator James B. Allen (chairman of the subcommittee) presiding.

Also present: Senators Hatch and Scott.

Staff present: Quentin Crommelin, chief counsel and staff director; James McClellan, professional staff (minority); Paul Guller, editorial director; and Melinda Campbell, chief clerk.

OPENING STATEMENT OF CHAIRMAN ALLEN

Senator ALLEN. The meeting will please come to order.

The Subcommittee on Separation of Powers is convened this morning to continue the subcommittee's investigation of the constitutional issues surrounding the negotiations of the executive branch with the Government of the Republic of Panama regarding the territory and property of the United States in the Panamanian Isthmus.

The subcommittee is pleased to have for this mornings hearing a distinguished group of witnesses from Government, from the legal profession, from the academic community, and from organized labor—all of whom are in some way affected by or involved in the canal negotiations.

I am certain that most of those present this morning are well aware of the central constitutional issue under investigation; however, perhaps it would be helpful for me to reiterate the propositions which are the focal point of this inquiry.

DISPOSAL OF U.S. TERRITORY

Article IV, section 3 of the Constitution of the United States provides that Congress "Shall have power to dispose of and make all needed rules and regulations respecting the territory or other property belonging to the United States." Many scholars of the Constitution believe the power given to Congress in that clause is exclusive.

which would prohibit the Executive from negotiating a treaty disposing of United States territory except with congressional consent. On the other hand, some constitutional lawyers have postulated the theory that the power of the Congress to dispose of the territory and property of the United States is not exclusive but is rather concurrent with the power of the executive branch to conclude treaties with the advice and consent of the Senate.

In any event, the subcommittee, I am sure, does wish to explore the issue fully so that all the facts are developed to enable the subcommittee to advise properly both the Committee on the Judiciary and the Senate on this point of constitutional law which is of particular national importance in the circumstances surrounding our discussions with the Panamanian Government.

FINANCIAL ASSISTANCE

Additionally, members of the subcommittee are also concerned that certain other agreements with the Panamanians for direct financial assistance may be in process of being concluded outside the context of the treaty negotiations with the result that any such agreement might not be subjected to the normal treaty ratification process which would be necessary otherwise. The press has mentioned a possible total of $5 billion.

Direct financial assistance of that magnitude would, of course, be made subject to specific congressional action through the appropriations process, but if such assistance were, in fact, an integral part of the treaty, then as such it would also be subject to ratification by the Senate.

The subcommittee will, therefore, require testimony on the intentions of the executive branch with respect to separately negotiated financial arrangements with the Panamanians so that the subcommittee can determine whether the result of such negotiations should be addressed by the Senate as part of the proposed canal treaty.

SCHEDULED WITNESSES

Our investigation will be greatly assisted today by the testimony of witnesses from the Department of State and from the Department of the Treasury. The subcommittee will, moreover, particularly value the testimony of Senator Hayakawa, Congressman Flood, and the other fine and knowledgeable individuals who have, in some instances, traveled thousands of miles in order to appear before us.

The first witnesses this morning are Mr. Robert Beckel, Deputy Assistant Secretary of State for Congressional Relations, and Mr. Herbert J. Hansell, the Legal Adviser to the Secretary of State.

Gentlemen, we look forward very much to hearing your testimony and we are indeed pleased to have you here. You may proceed as you see fit.

We welcome your testimony because we do feel that we do have an issue here that should be explored. The attitude of the State Department with regard to this issue is of great importance. We are anxious to learn the position of the State Department in this matter.

Will others testify besides yourself or will they be here to advise you?

TESTIMONY OF HERBERT J. HANSELL, LEGAL ADVISER, U.S. DEPARTMENT OF STATE; ACCOMPANIED BY MARK B. FELDMAN, DEPUTY LEGAL ADVISER, U.S. DEPARTMENT OF STATE; STEFAN A. RIESENFELD, COUNSELOR ON INTERNATIONAL LAW, PROFESSOR OF LAW, UNIVERSITY OF CALIFORNIA, BERKELEY, CALIF.; AND ROBERT G. BECKEL, DEPUTY ASSISTANT SECRETARY FOR CONGRESSIONAL RELATIONS, U.S. DEPARTMENT OF STATE

Mr. HANSELL. They will advise and also respond to questions, of course.

Senator ALLEN. That is fine. Please proceed.

Mr. HANSELL. Mr. Chairman, and members of the committee. I am Herbert Hansell, Legal Adviser, Department of State. I am pleased to have this opportunity to appear before you this morning.

With me this morning are Mark Feldman, Robert Beckel, and Stefan Riesenfeld.

The purpose of those negotiations is to agree upon a new treaty relationship to govern U.S. operation and defense of the canal until the end of the century; and to establish its neutrality thereafter. It is not my purpose today to comment on the substance of the negotiations; the administration has been consulting with Members of Congress throughout the negotiations to keep them informed, and will be continuing those consultations.

We intend that any new relationship between the United States and Panama concerning the canal that may be negotiated will be incorporated in a treaty and submitted to the Senate for its advice and consent to ratification.

Under any new treaty with Panama for the operation and defense of the canal, the Congress will have continuing legislative responsibility over such matters as U.S. defense activities in Panama, organization functioning of the canal operation, financial management of the canal, employee relations, and navigation. In addition, specific legislation will be required to implement many aspects of the new relationship, including the establishment of a new canal operating agency, and a new employment system, and measures concerning the financial management of the canal.

While it is clear that extensive implementing legislation will be required for this treaty, we have not been able to determine precisely the nature of that legislation since the terms of the treaty are still under negotiation. Thus, let me say at the outset that no decision has been reached as yet concerning the manner in which any transfers of U.S. property to Panama would be effected. However, I would emphasize, Mr. Chairman, that whatever the outcome of that particular question may be, the House of Representatives will in any event, have a major role in the creation and implementation of any new relationship between the United States and Panama.

I would like now to discuss with you our view on the legal question of whether legislation is required by the Constitution for a transfer of property belonging to the United States or whether the treaty power can be utilized for that purpose.

The nub of the problem is the interrelation of the treaty power clause of the Constitution [art. 2, section 2, cl. 2] and the property clause of the Constitution [art. 4, section 3, cl. 2].

Article 2, section 2, clause 2 dealing with the powers of the President, states:

> He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur.

Article 4, section 3, clause 2 provides:

> The Congress shall have power to dispose of and make all needful Rules and Regulations respecting the Territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Nothing in the language of the two clauses limits the treaty power with respect to disposition of property or makes the power of Congress with respect to disposition of property exclusive. As Mr. Justice Field stated in *Geofroy* v. *Riggs* [133 U.S. 258 at 267, 1890],

> The treaty power, as expressed in the Constitution, is in terms unlimited except by those restraints which are found in that instrument. . . .

But there is no restraint expressed in respect to dispositions.

The property clause, like most of the clauses granting legislative powers contained in article 1, section 8, provides that "Congress shall have power," without any qualification indicating exclusiveness against the treaty power.

This position is strongly supported by the place of article 4, section 3, clause 2 in the text of the Constitution, as well as by the history of the two clauses. It is buttressed by judicial decisions and by precedents in U.S. treaty practice. I would like to elaborate on these points briefly.

Although at an early period of our constitutional history, Thomas Jefferson seems to have suggested in his "Manual of Parliamentary Practice" that the treaty power does not extend to subjects of legislation, this narrow construction has never been accepted in practice and is rejected by a long line of Supreme Court decisions. Today the rule is firmly settled that treaties may be concluded on any subjects appropriate for international negotiation, and that treaty power extends to all areas within the legislative authority of Congress that are not expressly reserved by the Constitution to the exclusive jurisdiction of Congress. Under article 6, clause 2 of the Constitution all treaties made under the authority of the United States which are self-executing take effect as the law of the land without further legislative action.

The Constitution contains very few exceptions limiting the treaty power with respect to specific subjects. Principal instances are article 1, section 7, clause 1 and article 1, section 9, clause 7. The former clause provides that "all bills for raising revenue shall originate in the House of Representatives." The second clause cited ordains that "no money shall be drawn from the Treasury, but in consequence of appropriations made by law." Hence, it is recognized that treaties may neither impose taxes nor directly appropriate funds.

The property clause contains no language excluding concurrent jurisdiction of the treaty power. In fact, the placement of the property clause in article 4 of the Constitution, which deals with Federal-State

relations, rather than in article 1, provides strong evidence that the property clause does not restrict the treaty power. As the debates in the Constitutional Convention of 1787 show, the property clause originated in conjunction with the grant to Congress, in the preceding clause of section 3, of the power to create new States in the territories ceded to the United States. The powers of Congress enumerated in clause 2 of that section were added to establish Federal authority over these territories and other property belonging to the United States, while preserving the claims of the States and the United States in disputed matters. The drafting history of that clause shows no indication of any intent to restrict the scope of the treaty power.

It is also significant that article 4, section 3, clause 2 links "the power to dispose of" closely to "the power to make all needful rules and regulations" respecting the Territory and other property belonging to the United States. Thus, the scope of the treaty power should be the same with respect to these two categories of congressional power. It is well settled that the treaty power can be used to make rules and regulations governing in the territory belonging to the United States, even in the District of Columbia [*Geofroy* v. *Riggs*, 133 U.S. 258, 1890].

Moreover, the drafting history of the treaty clause, which was adopted in its final form a few days after the approval of the property clause, clearly shows that territory and other property belonging to the United States can be transferred by a treaty without legislation. During the debates in the Constitutional Convention on the treaty clause, it was settled by a specific vote that advice and consent of the Senate only should be required for making of treaties. Subsequent to that action the Convention adopted a motion by Mr. Madison that excepted treaties of peace from the requirement of a two-thirds vote in the Senate. An amendment was then introduced by Mr. Williamson and Mr. Spaight which would have reestablished the two-thirds vote requirement for a treaty of peace "affecting territorial rights."

Mr. King further suggested that the two-thirds rule should apply to all treaties giving up territory or rights of navigation and fishing. Then, for the sake of simplicity, the original provision requiring a two-thirds majority for all treaties was restored. It is clear from that history that the framers of the Constitution contemplated the transfer of territory and property belonging to the United States by treaty.

The power to dispose of public land and other property belonging to the United States by treaty is also supported by judicial decisions—[*Holden* v. *Joy*, 17 Wall. (84 U.S.) 211, 242, 243 (1872); *Geofroy* v. *Riggs*, 133 U.S. 258, 267 (1890); *Missouri* v. *Holland*, 252 U.S. 416, 343 (1920); *Asakura* v. *Seattle*, 265 U.S. 332, 341 (1924); *Santovincenzo* v. *Egan*, 284 U.S. 30, 40, (1931); *Reid* v. *Covert*, 354 U.S. 1, 16 (1957)]—and long standing practice.

The most familiar judicial statement of the power to transfer rights in land by treaty was made by Mr. Justice Clifford in *Holden* v. *Joy*—[*Holden* v. *Joy*, 17 Wall. (84 U.S.) 211 at 247 (1872)]—involving the validity of a treaty with the Cherokee nation providing for the sale and transfer of a large tract of land belonging to the United States.

The statement reads:

> . . . it is insisted that the President and the Senate, in concluding such a treaty, could not lawfully covenant that a patent should be issued to convey

lands which belonged to the United States without the consent of Congress, which cannot be admitted. On the contrary, there are many authorities where it is held that a treaty may convey to a grantee a good title to such lands without an act of Congress conferring it, and that Congress has no constitutional power to settle or interfere with rights under treaties, except in cases purely political.

Similarly, in *Jones* v. *Meehan* [175 U.S., at 10 (1899)] Mr. Justice Gray affirmed:

It is well settled that a good title to parts of the lands of an Indian tribe may be granted to individuals by a treaty between the United States and the tribe, without any act of Congress, or any patent from the Executive authority of the United States.

On the basis of that principle he held that in the case before the Court the land had "been granted by the United States to the elder chief . . . by the treaty itself." [175 U.S. 1 at 21 (1899)].

Although the treaties in these cases were concluded with Indian tribes the decisions are authoritative precedents for treaties with foreign nations. The Supreme Court affirmed in *U.S.* v. *43 Gallons of Whiskey* [93 U.S. 188 at 197 (1876)], that:

. . . the power to make treaties with the Indian tribes is . . . coextensive with that to make treaties with foreign nations. In regard to the latter, it is, beyond doubt, ample to cover all usual subjects of diplomacy.

Thus until the abolition in 1871 of the power of the Indian tribes to conclude treaties with the United States the treaty power of the United States with respect to Indian treaties had the same scope as with respect to other treaties.

Let me now turn to the treaty practice of the United States. There the precedents look two ways. The record shows instances were transfers of territory and other property have been made by or pursuant to treaties alone and instances where treaties or executive agreements disposing of property belonging to the United States have been concluded pursuant to or contingent upon congressional authorization.

Thus, precedents supporting the power to dispose of property by treaty alone can be found in the boundary treaties with neighboring powers, especially in the treaties between the United States and Great Britain of 1842 and 1846 for the location of our northeast and northwest boundaries, and in the treaty with Spain of 1819 which effectuated the cession of Florida and determined the boundary west of the Mississippi, ceding lands claimed by the United States on the Spanish side of the boundary.

I would like to call your special attention to the treaty with Mexico of 1933 and the treaty with Mexico of 1970. Both of these treaties provided for the rectification of the river channel and the cession of lands which would have been left on the other side of the channel.

Other recent examples of treaties transferring or providing for the transfer of real and personal property are the treaties between the United States and Honduras of 1971 recognizing the sovereignty of Honduras over the Swan Islands and the treaty between the United States and Japan of 1971 for the return to Japan of the Ryukyu and Daito Islands. Both treaties included provisions for the transfer of real and personal property belonging to the United States or its agencies. The terms of the treaties either transferred the property directly or agreed upon the transfer of property. The transfers were

made without implementing legislation apparently in reliance on the treaty or general statutory authority to dispose of foreign excess property.

In the history of transfers of property to Panama we have had a mixed practice. Property has been transferred by executive agreement implemented by a joint resolution, by treaty providing specifically for legislation; and in at least one instance by treaty alone. However, in the legislation implementing the 1955 treaty, Congress recognized the vadidity of conveyances made by operation of the treaty.

Thus, Mr. Chairman, for all of these reasons, we conclude that the President and the Senate, in the exercise of the treaty power, have concurrent power with the Congress to transfer property belonging to the United States.

I am authorized by the Department of Justice to state that it concurs with the view that the treaty power may be utilized for transfers of property. I am advised that an opinion of the Attorney General to that effect is in preparation and will be submitted to you as soon as it has been signed by the Attorney General.

Mr. Chairman, this concludes my presentation. I will be pleased to try to answer any questions.

Thank you very much for this opportunity to appear.

Senator ALLEN. Thank you very much, Mr. Hansell, for giving us the views of the State Department. As I understand it, this is the position of the State Department with respect to this treaty and the power inherent in the treaty-making process to include the transfer of property belonging to the United States. Is that correct?

Mr. HANSELL. That is correct.

Senator ALLEN. Does that mean then that the State Department or the President has no intention of getting the transfer approved by an act of Congress?

Mr. HANSELL. Not necessarily, Mr. Chairman. As I indicated in my statement, the negotiations are still in progress and it is not clear in what form any property transfers might be cast.

So, it is not at this point clear whether it will be done by treaty or in another form.

Senator ALLEN. I note in your statement that you go to considerable length to show what Congress will be called on to do in the way of the implementation of the procedure regarding the canal. But you do not say whether the House will be called upon to be involved in the actual decision of whether this transfer should take place or not.

In other words, you will present the Congress an accomplished fact on the approval of the treaty and then say, "Now it is up to you to implement the management of the Canal to the extent that we have the power to manage it under the treaty." But you are silent about the approval by the Congress.

Mr. HANSELL. Might I call your attention to my statement intended to cover this? If it did not do so clearly, it was deficient.

I said that no decision has been reached yet concerning the manner in which any transfers of U.S. property to Panama would be effected. Whatever the decision is with regard to that question, the House is to have a major role in the creation of any new relationship between the United States and Panama. Major questions in terms of defining that relationship will be submitted to the House.

Senator ALLEN. I understand, but you do not indicate that you are going to call that into play, that is, congressional action with regard to terminating the present relationship.

Mr. HANSELL. It is clear that question remains to be resolved.

Senator ALLEN. Once you terminate the present relationship by treaty, approved by a two-thirds vote of the Senate, you would then turn to Congress for implementing legislation. In other words, after the horse has left the stable, then you are going to give the Congress an opportunity to possibly somewhat close the door; is that correct?

Mr. HANSELL. The decision really has not yet been made as to how the stable door will be opened and how the horse will be let out of the stable. [Laughter.]

Senator ALLEN. Why is it you are fighting submission of this question to the people's representatives in the Congress? Why is the executive department fighting or refusing to agree that it will submit this question to the people's representatives in the Congress?

Mr. HANSELL. I do not think it is either fighting or refusing, Senator. I think until the negotiations are concluded and the terms are known completely, it is not really possible to make a judgment as to the form in which the entire transaction would best be cast and submitted.

So, the decision truly has not been made as yet. I think it perhaps is a bit premature for us to conclude that it will not happen or that there is resistance to it.

Senator ALLEN. I note that the 1955 treaty with Panama contained a provision making significant land transfers provided for in the treaty "subject to the enactment of legislation by Congress."

That was in the 1955 agreement. Is it contemplated that the new treaty, if there be one, contain a similar provision?

Mr. HANSELL. The new treaty, the formal new treaty, has not been drafted in any definitive way.

I think it is fair to say that the preference probably would be this. If the present plan is implemented, then the plan would be to follow the precedents that I have indicated.

But as I say, no decision has really been made on that.

Senator ALLEN. You talk about the Constitutional Convention as a precedent. It looks like we have a much more recent precedent in 1955 when the treaty was handled in this fashion. I do not see that it is necessary to go back to the Constitutional Convention in order to look for a precedent when you have one dealing with the very same country and regarding the very same property wherein the treaty submitted contained a provision that nothing transferring property would be effective until it had been approved by the Congress.

Mr. HANSELL. The only purpose of reference to the Constitutional Convention was in connection with explaining the treaty power.

Senator ALLEN. Yes, but I point out the idea that the Constitutional Convention was not precedent in that regard whereas the 1955 treaty clearly is.

Mr. HANSELL. Obviously the 1955 precedent is of significance and is a factor that I am sure will be taken into account.

I would have to check this, but I do believe that the 1955 treaty did release some parcels of land to Panama without prior congressional

authorization, although it did, of course, make the transfer of other land subject to the enactment of legislation.

But there were some parcels that were released without congressional action.

Senator ALLEN. Yes, but I think you will find if you check that the parts which were conveyed without approval of the Congress had to do with boundary settlements where there was a give and take situation between the countries and a quid pro quo in a settlement of the boundaries. It is not a conveyance of property about which there is a doubt about the title or the property lines. Is that not correct?

Mr. HANSELL. I would defer to your superior knowledge on the subject, Mr. Chairman.

I do want to reiterate this. Whether the particular issue of property transfer were to be submitted to the House or only to the Senate, there is no doubt, again as indicated in my statement, that the implementation of the treaty relationship—the new treaty relationship—would be submitted in one form or another to the House so that the House will have an opportunity to express its approval of that new relationship.

Senator ALLEN. That is, however, after the treaty has been entered into conveying the property and after that has been approved by the Senate. You say that the House would have a role after the treaty is in full force and effect. Only then would you submit it to the House, as you are now suggesting; is that correct?

Mr. HANSELL. Not necessarily, Mr. Chairman.

Senator HATCH. What if you do it at that point—the way the Senator has outlined—that the treaty has taken effect and the House has refused to grant authority? What are you going to do then?

Mr. HANSELL. For that reason, Senator, I think it is almost inevitable that the action of the Senate in approving the treaty would have to be qualified or conditioned upon enactment of the appropriate implementing legislation so that you would not get in that situation.

Senator HATCH. Mr. Chairman, excuse me for interrupting.

That is our point. People have characterized this as a fait accompli that we cannot do anything about. The minute that treaty is signed—even if you provide that you are going to require the House, or you are going to recognize the authority of the House, to give it final approval or to enact enabling legislation after the fact—the people in Panama may already have been led to assert that it is theirs and that they have a binding treaty.

I think we are going to have a difficult time if the House, in fact, then turns around and does not approve it. There may be some likelihood of that if you bypass the House rather than coming to them at this particular point.

That is one of the reasons why these hearings, it seems to me, are so vitally important and necessary. You, yourself, admit that you will ultimately go to the House.

Why do not we do it now, and do it properly rather than run the risk of disrupting and possibly injuring our relationships beyond repair?

Mr. HANSELL. I think that we would contemplate, Senator, in consultation with the Congress and the leadership, developing a program which would be designed to avoid exactly that kind of a consequence.

Precisely how that would all be worked out, I think, is not envisioned at this point because negotiations are still going forward.

Senator HATCH. Let me tell you how you can envision it. That is to do what the Constitution provides for, which is to come to the Congress and ask for legislation that gives you the right to enter into a treaty which would then be ratified and approved by the Senate. That is the only way to do it.

If you go ahead and enter into a treaty, knowing that the dictatorship down there needs the treaty to maintain any credibility, then once you do that, I think you would have Panamanian troops within the zone 1 hour after that treaty is entered into. Then we will have a serious diplomatic problem in getting them out of there, assuming that either branch of the Government, or both, do not approve the treaty.

So, we have problems. You may be causing, assuming that they do not approve the treaty, irreparable damage because we may be forced into the position of going down there and asserting our rights over the zone. The Panamanians would consider it already theirs because of the treaty. They may not understand the American constitutional requirements regarding this treaty.

One of the major reasons for having the treaty, as advanced by Mr. Linowitz, is that we want to have more stable relationships with our Latin American neighbors. One of those great arguments would have gone down the drain and we would have nothing but problems during the rest of the life of the Panama Canal.

So, this is one of the things that we are very concerned about on this subcommittee.

Mr. HANSELL. I think we recognize those concerns.

Senator HATCH. But nobody seems to be doing anything about it. They do not seem to be coming to the Congress. Do you not think they should come to the Congress?

Mr. HANSELL. Let me point out that there have been, both on the House and Senate side, extensive consultations that are still going on. One was as recent as yesterday afternoon. There would not be any final decisions made with respect to how to approach this, with respect to the kinds of problems you outlined, without careful consultation with the leadership.

Senator HATCH. With whom?

Mr. HANSELL. Leadership of the Congress.

Senator HATCH. The leadership is not the whole Congress, and sometimes it doesn't even control Congress.

Mr. HANSELL. The executive branch often faces the question who in the Congress to confer with for the purposes of consultation?

Senator HATCH. It is not just the leadership.

I believe if you came to the House of Representatives right now and asked the Members to approve legislation authorizing the giveaway of the Panama Canal, you would not get a majority vote right now. That may be the reason for the approach that is being taken by the administration. If it is so, then it is probably not a proper reason.

But let me give you a leader in the House, for instance, who has testified here who is very, very bitter about it. That is Congressman

Murphy. He is one of the leaders. He is the chairman of the most pertinent committee involving Panama Canal. He is totally against this. He may be the leader to defeat it in the end, at least in the House.

He said, "We in Congress have yet to see"—this is June 30, 1977, and this is in the Congressional Record—"any material pertinent or not which is either third-hand information or speculation." He is one of the key Members of the House. He certainly is not being consulted, and has repeatedly expressed concern that his committee has been kept in the dark about this treaty.

Maybe you are going to Mr. O'Neill and Mr. Wright. Maybe you have gone to them. I have been in a meeting with the majority leader of the Senate. But I am not sure that this is being approached in the proper manner. It certainly is ignoring the fact that you seem to acknowledge, that is, that the Congress has an obligation under the Constitution and has the authority to approve the divestiture of U.S. land, such as the Panama Canal.

Mr. HANSELL. Senator, I think it is very important to emphasize and re-emphasize the desire and intent of the administration to consult carefully and extensively with the Congress. If I may, I would like to ask Mr. Beckel if he could comment a moment or two on the efforts that have been made in that regard. I think that you will find this quite impressive to the extent that it is news to you. May I ask Mr. Beckel to do that?

Senator ALLEN. Yes; that would be fine.

Mr. BECKEL. Thank you, Mr. Chairman.

Senator Hatch, the consultations with the Senate on the treaty have been extremely extensive. We have been extending invitations to appear. We have been up on the Hill with both Ambassadors briefing Senators and have extended invitations to almost 90 Senators. We have briefed over 50.

Senator HATCH. I will acknowledge that I was one of the Senators who was at one of those briefings. I appreciate that. But I did want to bring out the point I was making. I am not sure we are going about it the best way.

Mr. BECKEL. Let me suggest to you, Senator, that the consultations that have taken place on the Senate side are beginning to take place extensively on the House side. We met this week, the Ambassadors and myself, with Congressman Metcalfe, who is chairman of the Panama Subcommittee in the House, and Congressman Wright. We have also held a substantial meeting with a number of House Members, including Congressman Murphy, whom you have mentioned. We listened to his views and he listened to ours. We intend to consult on a broad range of issues with the Democratic and Republican leadership, the committee leadership, and other Members concerned in the House and Senate.

I think before the August recess we intend to at least extend invitations to all 100 Senators. By that time we will have touched base with at least 50 Members of the House. We intend to continue throughout the fall.

So, we will have received information and briefed, I think, an unprecedented number of Congressmen on this issue.

Senator HATCH. Mr. Chairman. I would like to bring out one other point.

Senator ALLEN. Certainly.

Senator HATCH. I believe that consultation where they come in and tell us what they are going to do is one matter. But Mr. Hansell, it seems to me, has indicated that he acknowledges this is an important issue which the Constitution provides for the approval of Congress for the divestiture of property.

Although, as I understand it, in your brief you feel there is not current jurisdiction here. He has indicated that the State Department fully intends to seek the approval of the House, as well as the ratification of the Senate. Am I correct in stating that?

Mr. HANSELL. As to some aspect of the implementation program, but not necessarily the property transfer.

Senator HATCH. If you are not acknowledging that, then we are concerned about that. We are concerned about ignoring basically the constitutional mandate that the Congress has to approve the divestiture of U.S. Government property.

If we are right in that assertion, the people of America are going to be pretty irritated when in the end Congress asserts its rights and, let us assume, goes against the treaty which the Panamanians are going to call binding.

If they do that, and if the Congress goes against it, we will be in a quagmire like you have never seen before which would disrupt Latin American relations like they would never be disrupted if we had taken what we consider to be the proper approach at the outset.

Mr. BECKEL. There are a number of other scenarios short of that which could be worked out between the executive and the Congress in the treaty ratification process.

Senator HATCH. We are not talking about ratification. We are talking about the legislation enabling you to have the authority to go down there.

Mr. BECKEL. I understand what you are saying. The discussions we held in the House 2 days ago concerned that very subject—the implementing legislation including the question of transfer of land and water. We approached the House and will continue to approach the House with the understanding that we have not made a definitive decision in the executive on this matter. We will take consultation from the Congress. We intend to do so before that decision is made. That is why we are here today.

Senator HATCH. Let me make this point. Let us assume that the committee is right in its interpretation which I think most of us are starting to lean toward right now. That is that you should have had implementing legislation enabling you to go down there and negotiate a treaty to begin with. Once that is done maybe you can come back and get ratification by the Senate.

I would believe that the Congress may very well grant you the authority to go down there and negotiate. It may not. That would be the appropriate way, however. Once that is done it is a matter of ratification. I would think you would have a much better chance than if you ignore the Congress at this point, come back with the treaty which the Panamanians consider to be binding because they will never understand, it seems to me, this legal argument—or at least the general population will not understand it—I do not think it will ever be explained to them.

Consequently, you will have the disruption in Latin American relations that could ensue because we did not approach it in a procedurally, proper manner. It is a constitutionally proper manner.

If we are pointing this out so there is a great interchange that causes you to do that, I think that these committee hearings will play a vital role in protecting Latin American-U.S. relations far into the future.

Mr. Chairman, I am sorry to have interrupted you on your questioning. I just wanted to get some of these points on the record.

Senator ALLEN. That is perfectly all right. Feel free to make inquiries at any time. That is the best way to cover the subject thoroughly.

As I understand the position of the State Department, it is that it is not necessary that there be an act of Congress, that is, there be an action by both Houses of the Congress, to transfer property belonging to the United States. That a transfer can be concluded by a treaty approved by the Senate by a two-thirds vote. Is that correct?

Mr. HANSELL. Yes, Mr. Chairman.

Senator ALLEN. But you state that even though that is correct, you have not reached a decision as to whether the House will be called into play to give its approval by giving assent to an act of Congress. Is that correct?

Mr. HANSELL. Yes.

SEWARD'S FOLLY

Senator ALLEN. Carrying your line of reasoning one step further, perhaps the purchase by the United States of Alaska from Russia, known at that time as Seward's Folly, where some $7.2 million, I believe, was paid for all of Alaska, ought to be reexamined in today's spirit of détente with Russia. If Russia should point out that this was a transaction between the czarist regime, a discredited government—and that they are not bound by it—and if thereafter the executive branch entered into a treaty with Russia returning Alaska to Russia, could that treaty on approval of the Senate be activated and approved? That is, without approval by the House?

Mr. HANSELL. That is quite hypothetical, Mr. Chairman. I do not know that I am competent to pass on all aspects of that. But one distinction, it seems to me, that we have to make at the outset is that Alaska is a State. We are talking about wholly different relationships when we are talking about territory belonging to the United States.

I think I would not want to get into the nuances of that issue.

Senator ALLEN. It would take action by the House, would it not?

Mr. HANSELL. I will pass on that question.

Senator ALLEN. What would the situation have been prior to Alaska's statehood when Alaska was a territory?

Mr. HANSELL. These, of course, are judgment questions just as we have indicated it is a judgment question here as to how it should be done. But, if, for example, the issue were presented with regard to transfers, and if there were minor cessions of Alaskan property, or even major dispositions, that could be done by treaty—I do not know if there were any cessions of Alaskan territory, but it is conceivable that there may have been some—it would, of course, have to be done by treaty.

Senator ALLEN. While Alaska was a territory, could the reconveyance of the territory of Alaska to Russia been accomplished by a treaty?

Mr. HANSELL. As a matter of constitutional authority, with Senate approval by a two-thirds vote, I guess that could have occurred.

Senator ALLEN. Public opinion would not have approved of that, would it?

Mr. HANSELL. I am no authority on public opinion, but I guess—and that is hypothetical—it would be a very difficult transaction to carry out.

Senator ALLEN. Do you not think that the public opinion might be consulted with respect to the Panama situation?

Mr. HANSELL. That is why we are having extensive consultations with the representatives of the people. We have been doing precisely that.

Senator ALLEN. As Senator Hatch has pointed out, consultation is not an act of Congress. That is far from it. You might get unanimous approval in private conversations with every Member of the House and Senate. But that still would not comply with the constitutional mandate that this has to be done by Congress by public act. You could have every Member of the House and Senate collected on the White House lawn. They might all agree to it, but that still would not be an act of Congress.

Mr. HANSELL. I was responding to your point about sampling public opinion.

Senator ALLEN. Yes. But in the last analysis the Constitution says that public opinion is to be sampled in disposing of U.S. territory not by consultations but by act of Congress.

Senator HATCH. I might just add with regard to the Senator's question on Alaska that we are going to have testimony later today from Dr. Dozer. He states in his prepared testimony, and I think it is correct, that early in the Eisenhower administration, the Soviet Union officially challenged the validity of the Alaskan Purchase of 1867.

I think we may be establishing a dangerous precedent here. If that happens, I think this treaty would put a blot on the record of the administration rather than the great mark of distinction and honor that the people in the State Department seem to think will be bestowed upon them. I think Senator Allen, my distinguished friend and colleague, has pointed out something very important. That is, perhaps the people of the United States do not want this to happen and to have it happen in the way that it is—by ignoring Congress and the representatives of the American people, the administration will create a major political crisis in America.

Moreover, this treaty could create a tremendous long-term, if not permanent, disruption in our relationship, not only with the Republic of Panama, but a number of South American or Latin American nations. Keep in mind that we had witnesses last week who have indicated that they do not feel that the Latin American countries are really going to be that concerned if the treaty fails.

On the surface they are saying they would like to see the Panamanians control the zone, but in reality, I suspect, many are hoping

that they do not because of the economies involved and because of the efficient management of the canal by the United States.

So, there is a lot of evidence that has come before this committee to indicate that we may have better relations if we maintain control.

There are two sides to this question regarding the attitudes of other Latin American countries. What I want to prevent is doing something illegal and unconstitutional which produces a fait accompli and creates an irreparable problem in Latin America as well as problems in this country. This treaty might not do anybody any good. In the end it might accomplish something that could have been accomplished properly with a constitutional mandate and with a congressional mandate, with popular support.

SUPREME COURT DECISIONS

Senator ALLEN. Mr. Hansell, I understand that two lawsuits have been brought seeking a court determination of the constitutional issue. I am advised that five separate courts have refused to hear the case on the merits, culminating in the recent denial by certiorari by the Supreme Court in the case of *Helms* v. *Vance*.

The most recent decisions have indicated that the courts did not feel the matter was yet ripe for decision since there was not a treaty provision for the court to examine.

Do you feel there is a danger of the case becoming overripe? As it is, the treaty entered into and ratified by the Senate and given effect by putting the Panamanians in possession of the zone prior to a decision on the merits, what good would the Supreme Court decision do at that time?

Mr. HANSELL. I am not avoiding your question, Mr. Chairman. I am not sure I really understand how to respond to it.

I assume if there is a proper issue for determination then the courts will decide the issue.

Senator ALLEN. What confuses me somewhat is this. Possibly it disturbs me. The executive department would fight these lawsuits, merely seeking a determination of the right of the House to be involved in this approval. They might go into the research of the cases. You indicated you have made up your mind as to whether it will be submitted for approval by an act of Congress.

So, how can we credit your assertion that a decision has not been made as to whether to submit the matter for congressional approval?

Mr. HANSELL. Well, sir, I am not familiar with all the issues raised, but I have no trouble with the notion that you would not want to hesitate, it seems to me, to oppose a lawsuit that asserts an erroneous principle of constitutional law which those cases have evidently undertaken to do.

As I indicated earlier, the Justice Department, of course, concurs with the point of view that we have expressed. The Attorney General will be sending his opinion to you. It seems to me that these are important issues of constitutional law and when a case asserts an erroneous principle, it is undoubtedly important to try to avoid having that erroneous principle established.

Senator ALLEN. In other words, you feel that if you did submit it to the House or insist that it be approved by the Congress, then you would be doing something that is not required by the Constitution; is that correct?

Mr. HANSELL. Yes.

Senator ALLEN. It could be done, more or less, out of the goodness of your heart?

Mr. HANSELL. No.

Senator ALLEN. What would be your reason if you still have not decided what you are going to do. Why would you submit it if you feel that it is contrary to the Constitution?

Mr. HANSELL. That is the judgment, Mr. Chairman, that I do not think I could make at this time. That will be a function, obviously, of a number of considerations, including the terms of the ultimate arrangement, if one is negotiated, and a number of other considerations. I am afraid I could not speak to that.

Senator ALLEN. How would it be contrary to the Constitution if your contention is that the Congress and the Executive have coequal authority in this area?

Mr. HANSELL. My only assertion about the Constitution in this regard is that it can be done by treaty power. There are concurrent authorities provided in the Constitution for property conveyance. It can certainly be done by act of Congress and it can certainly be done by the Executive.

Senator ALLEN. Then both of them have the authority?

Mr. HANSELL. Yes.

Senator ALLEN. Congress on the one hand or the Executive with the approval of the Senate on the other; is that right?

Mr. HANSELL. Yes.

Senator ALLEN. Why, since both can do it, would it be wrong, then, to let both do it? Why would you insist that only one route be followed?

Mr. HANSELL. I am not suggesting that would occur. I am saying that is a judgment that can be made at a later time. We cannot speak to it at this point.

Senator ALLEN. I do not see much indication of your wrestling with the thought of submitting it to the Congress. It looks to me like that if you did that, then you would be forced into that decision by Congress itself. I do not see an indication that you are giving serious consideration to submitting it to the Congress.

Mr. HANSELL. No, sir. Perhaps the only reason why you get that impression is that we were asked to speak to a legal issue today and to explain our view. Naturally we are doing that.

Senator ALLEN. Yes. Possibly we are going far afield in asking you for policy statements as well as a legal statement. Is that what you are suggesting?

Mr. HANSELL. I am saying that the reason we are emphasizing the treaty power is that that is the issue that was raised for consideration today.

But the judgment as to how this will be done depends on so many factors that cannot now be anticipated.

Senator ALLEN. Is Mr. Beckel here to make a policy statement? Mr. Hansell, are you talking on the legal aspects only, and is Mr. Beckel going to address the policy issues?

Mr. HANSELL. No. Our understanding and the point I was trying to make just a moment ago is that you seem to be inquiring as to why we were focusing on the treaty power. I am simply saying that was our understanding as to the issue in today's hearings. That is what the hearings are about today.

Senator ALLEN. The issue is whether submission to the Senate and approval by the Senate is sufficient to affect a transfer, or does it require action by the Congress as well? That is what we are trying to determine as well as to determine what approach the executive department intends to adopt.

Mr. HANSELL. On that issue we are saying that it can be done by the treaty power and also can be done by the Congress.

Senator ALLEN. Let me ask you this. You say either the Congress can do it or the Executive can do it, with the approval of two-thirds of the Senate.

Would it be your thought, then, that if Congress took the initiative that it would merely take a majority vote in the Senate?

Mr. HANSELL. If the Congress took the initiative?

Senator ALLEN. If Congress disposed of the property, would it take a two-thirds vote in the Senate, or could that be done by a majority vote?

Mr. HANSELL. If a property disposition occurred by an act of Congress, which, of course, would be an Act of both Houses and a signature by the President, that would take a majority vote.

Senator ALLEN. But there is a whole lot more involved than the mere transfer of the property. That is one of the reasons why you are approaching it by treaty; is that correct?

Mr. HANSELL. There is a great deal more involved in negotiations with the Panamanians, you mean?

Senator ALLEN. Yes.

Mr. HANSELL. Yes.

Senator ALLEN. In other words, the treaty is necessary?

Mr. HANSELL. The treaty is clearly the appropriate way to deal with these relationships, yes.

Senator ALLEN. That is the route you are going to follow? And, you have not yet determined, and you are still considering, whether to get approval of the entire Congress for the transfer of the property; is that right?

Mr. HANSELL. For property transfer, yes. That could be by treaty or by legislation.

Mr. BECKEL. Senator, I would like to respond to the policy question.

I think that policy evolves after consultation in a hearing such as this. It is presently the policy of the State Department to solicit extensively the views of the Congress on this matter, taking into consideration that the Panama Canal is an issue unique in politics, at least, if not from a legal standpoint. We recognize that. We recognize the political implications of the treaty. As such, we go to the representatives of the people. We have sought out their advice and counsel.

I think it would be a great mistake not to do this. We intend to continue over the next 2 or 3 months.

Senator ALLEN. I say again that getting approval of the Members is not approval of Congress, even though you get the approval of every Member of the Congress. That would not be an act of Congress that is required by the Constitution.

We would hope that, in addition to conferring with the leaders and various Members, you would get official action by the Congress for this transfer.

I would hope that after you talk with all of the Members that you ought to know then whether you could push through a bill. I would think that once you have talked with all the Members and they approve, then it looks as though to me that you would have no fear of submitting it to the Congress for enactment of the statute.

Mr. BECKEL. Testing the waters?

Senator ALLEN. That is why you are conducting these private sessions; is that right?

Mr. BECKEL. I think we are legitimately coming up here to assess the opinion of both bodies. They are representative of the people and we intend to do that.

Senator ALLEN. Yes; but once you feel like you have a majority sentiment in the House and two-thirds sentiment in the Senate, then will you be ready to ask for a statute on territorial transfers in addition to seeking approval of the treaty?

Mr. HANSELL. Senator, you understand, of course, that consultations which have taken place and will be going forward, cover a great deal more than just the property transfer issue. There is a full range of considerations.

Senator ALLEN. That is postaction implementation that you are talking about there.

Mr. HANSELL. There are a great many issues involved here. As Mr. Beckel said, the administration is very sensitive and very anxious to have the views of the Members of Congress.

FINANCIAL ARRANGEMENTS MAY BE PART OF TREATY

Senator ALLEN. You suggested that there was a whole lot more than the transfer of the property involved and that it would require a treaty. These tremendous sums which I mentioned for payment by the Government to Panama—would that also be a part of the treaty? Or, would that be arranged on the side?

Mr. HANSELL. I know nothing about the tremendous sums. I have seen the same newspaper stories.

Senator ALLEN. Then let us strike out the word "tremendous" and use "substantial."

Mr. HANSELL. If there are any arrangements which are part of the arrangements between the United States and Panama, then these would be a part of the treaty. If there are any financial arrangements between the two countries, then that would be the case. That has not been determined.

But if it were a part of the program, then they would be submitted. That would be whatever arrangements that might be worked out.

Senator ALLEN. That would be in the treaty. Some of that, though, you would call on the Congress for approval by statute; would you not? Some portions of what would be in the treaty would be in the post-action legislation that would require action by Congress; is that correct?

Mr. HANSELL. I am sorry.

Senator ALLEN. You say that all of the financial arrangements having to do with the canal are going to be in the treaty. At least those phases, after action has been taken, would be the sum of what you would submit to the entire Congress; is that right?

Mr. HANSELL. Senator, let me step back. It is a little more complicated. Let me try it this way.

If there are financial arrangements as part of the treaty, those, of course, would be submitted with the treaty.

If there are other financial arrangements—and again all of that is very speculative at the moment—then those, of course, would be submitted to the Congress and reported to the Congress and submitted to the extent that is appropriate to do so.

I am afraid this is all very hypothetical because there are no understandings or agreements along that line, not withstanding newspaper speculation—at least that I am aware of. So I cannot really answer your question.

But I think you could say that whatever appropriate action should be taken will be taken.

Senator ALLEN. Some portions of the matters covered in the treaty would have to be approved by the House.

Mr. HANSELL. To be implemented; yes.

Senator ALLEN. But that is after the property has been transferred and after the canal has been disposed of.

Mr. HANSELL. If it occurs by treaty; yes.

It is hard to visualize the sequence. We do not know what action will be taken by which body in which sequence. We do not know what the proposals will be.

PANAMA HEAVILY IN DEBT

Senator ALLEN. Is not Panama heavily indebted to the international bankers?

Mr. HANSELL. I am not informed on that subject.

Senator ALLEN. I understand that they owe almost $3 billion and that these negotiations might lead to the acquisition of enough funds to either pay off in full, or make substantial payments on these obligations to the big international banks. Do you know anything about that?

Mr. HANSELL. No; I do not think we are in a position to speak to that.

Senator ALLEN. I wonder if Mr. Beckel could respond to that.

Mr. BECKEL. Senator, I understand that you have called this morning members of the Treasury Department to discuss that issue. We are not at liberty or know enough about the facts to discuss it.

I would like to add one thing. I think the statement, that is, the newspaper statements that you alluded to, Senator, are speculative, at best.

Senator ALLEN. Thank you.

I have many more questions, some of which I will submit to you in writing, but we have other witnesses. We have already gone over the time allotted for you gentlemen. The discussion has been most interesting and most informative.

Senator Hatch, do you have anything else?

KISSINGER-TACK STATEMENT FOR NEW TREATY

Senator HATCH. I would like to ask a few questions.

Mr. Hansell, why, in your judgment, did the State Department refuse to submit the Kissinger-Tack agreement to the Congress; that is, the one in 1974 entered into by Secretary Kissinger?

Mr. HANSELL. I am not aware there was an agreement, Senator, that would require submission.

Senator HATCH. It is our understanding that there was an agreement in 1974 entered into by Mr. Kissinger.

Mr. HANSELL. We will investigate, but I think what you might be referring to is a set of principles or understandings which was something that Mr. Kissinger announced. I have reference to it here somewhere. I do not think there was an agreement, as such, Senator.

Senator HATCH. That may be the wrong way to characterize it.

I have been reading the Georgia International Journal of Comparative Law, volume V, 1975, beginning on page 195. It says:

> On February 7, 1974, Secretary of State Henry Kissinger and Juan Tack, Minister of Foreign Affairs of Panama, announced in a joint statement for negotiations of a new Panama Canal treaty. The United States agreed to abrogate the treaty of 1903 and its amendments to eliminate the concept of in perpetuity to fix a determination date for the new treaty to return the Canal territory to the jurisdiction of Panama; to raise the benefits to Panama; and to grant Panama a role in the administration of the Canal.

Mr. HANSELL. That answers it.

Senator HATCH. Are you aware of that?

Mr. HANSELL. Yes, it was a declaration, a statement.

Senator HATCH. Regardless of how you wish to characterize it, you are aware of that particular occurrence. Why did the State Department not bring that to the attention of Congress or bring it to Congress for approval?

Why for the last 3 years, in essence, has the State Department refused to take the position of going to Congress and requesting legislation to the Department to gain ratification?

Mr. HANSELL. I cannot answer for others, but I think I would say, Senator, that there is really nothing to submit.

There are statements of intention and proposed efforts and programs and negotiations all the time. I am not aware that there is any appropriate procedure for submitting anything of that kind.

Senator HATCH. Let me refer you to a statement on page 8 of your prepared statement. You cite the case of *Holden* v. *Joy*. This was cited last week by Mr. Meeker.

Mr. Meeker agreed that the language pertained to an exchange of property between the Cherokee Indian Nation and the United States. We wanted to move the Cherokees west of the Mississippi at that time. So, we exchanged properties west of the Mississippi in exchange

for their property east of the Mississippi. Are you aware of that case?

Mr. HANSELL. Yes.

Senator HATCH. Mr. Meeker agreed that the statement that you included in your written statement today, or the quotation from *Holden* v. *Joy*, was inapplicable and it was not the ruling of the court but mere dicta.

Mr. HANSELL. There is a provision or statement in the case to the effect that the issue need not be decided, but they went on to deal with the issue. That was obviously a judgment call.

But I am not disagreeing that the case could have been resolved without reaching the issue.

Senator HATCH. I do not know anybody who would disagree with that statement. I do not think you would either.

Mr. HANSELL. No; but nevertheless that is a pretty definitive view.

Senator HATCH. The dicta, of course, does not mean the ruling on the case.

Mr. HANSELL. I understand.

Senator HATCH. You cite *Jones* v. *Meehan* in your statement. You are aware that was a transfer of Indians to a white settlement, are you not?

Mr. HANSELL. That is not my recollection.

Senator HATCH. I understand that is what that case stands for. If that is so, then again that case does not stand for what you are advancing it to stand for.

On page 9 of your prepared testimony, as to the case of *United States* v. *43 Gallons of Whiskey*, that did not involve the divestiture of territory of the United States, but of personal property, and whiskey in this particular case. Is that not true?

If I am right, then that would hardly be a precedent for the actions by the State Department in regard to this treaty.

Mr. HANSELL. I am not quite sure.

Senator HATCH. I am pretty sure about that.

Mr. HANSELL. That case has additional relevance in terms of the fact that it was applying rules in the territory.

Senator HATCH. Agreed, but it was not a transfer of territorial property, or territory.

Mr. HANSELL. I believe that is right.

Senator HATCH. OK. Then again that would not be a case in point to stand for the proposition that the State Department has concurrent jurisdiction in, let us say, taking action in regard to article IV, section 3, clause 2.

Mr. HANSELL. When you say the State Department, I want to be clear that we are talking about the Chief Executive of the United States with the approval of two-thirds of the Senate.

Senator HATCH. We are talking about the State Department and the administration. Let's talk about the administration that seems to be effectuating a treaty with the understanding that it has the current jurisdiction and that all it needs is a ratification of two-thirds of the Senate.

What I am saying is that it needs more than that because of article IV, section 3, clause 2 of the Constitution. These cases do not back up your theory of concurrent power.

Mr. HANSELL. On that latter point, I do disagree. I think they do. I think the Attorney General concurs that they do. I think most legal opinion is that they do.

Senator HATCH. I completely disagree. I do not think most legal opinion would concur with you, and certainly it would not give much account to a case that did not involve transfer of property nor to a case that involved 43 gallons of whisky nor to a case that involved transfers of land from Indians to whites.

Mr. HANSELL. As to *Holden* v. *Joy*, notwithstanding the question of dicta, it is a clear statement of the law. It is a good statement of the law.

Senator HATCH. It really is not. I cannot find one case where the law is stated except in *Holden* v. *Joy*, which everybody agrees is dicta. Judges can occasionally put dicta in, but when it does not stand for the rule of the case, dicta is mere rhetoric.

Mr. HANSELL. Much more than that, dicta is not necessarily the rule in a case.

Senator HATCH. Let me cite another case for you, which you do not have in your prepared testimony. That is *Sioux Tribe of Indians* v. *United States*. That case is set forth at 316 U.S. 317. In that case the holding was that since the Constitution places the authority to dispose of public lands exclusively to Congress, the executive power to convey any interest in these lands must be traced to congressional delegation of its authority.

That case was decided in 1942, long after *Holden* v. *Joy*. I think it has to take precedence over *Holden* v. *Joy's* dictum.

Mr. HANSELL. I am suggesting that maybe the language you have read is possibly dicta.

Senator HATCH. That is the holding in this case.

Mr. HANSELL. I do not have that particular case here. But my understanding was that the holding was the President could not, by Executive action alone, give an Indian tribe a compensable interest in the lands.

Senator HATCH. The rule of law that it was based upon was article IV, section 3, clause 2.

Let me give you some more precedent that goes all the way back. As I interpret it, it is your position that the Congress' power over public territory is not exclusive. But let me cite Judge Story. I refer to his famed "Commentaries on the Constitution," volume II, section 28, page 200. This is the 1873 edition, where he says:

> The power of Congress over the public territory is clearly exclusive and universal and their legislation is subject to no control but is absolutely unlimited unless so far as it is affected by stipulations and cessions or by the Ordinance of 1787 under which any part of it has been settled.

He continues, citing numerous precedents:

> But the power of Congress to regulate the other national property is not necessarily exclusive in all cases.

In other words, as far as regulating national property is concerned Congress power is concurrent but as far as divesting it or transferring it, it is very, very clear that Congress power is exclusive.

The *Sioux Indian* case makes it clear that it is exclusive.

You cite *Geofroy* v. *Riggs* in support of your proposition that the treaty power is not limited with respect to the disposition of U.S. property. I do not think you cited enough of that particular passage because if you quote it in full, the quotation of the court is as follows:

> The treaty power, as expressed in the Constitution, is in terms unlimited except by those restraints found in that instrument against the action of the Government or of its departments and those arising from the nature of the Government itself and that of the States. It would not be contended that it extends so far as to authorize what the Constitution forbids or a change in the character of the Government or in that of one of the States or a cession of any portion of the territory of the latter without its consent. It would seem to follow that a treaty which purported to exercise the power exclusively granted to Congress would require implementing legislation as is the case when the treaty requires appropriations.

If I might make an observation, let me say this. I do not see one case in your statement today that supports the position of the State Department.

I would suggest that the State Department is wrong in its interpretation of the Constitution, and the more I get into it the more I realize that you are dead wrong. To go around Congress, to enter into a treaty which really produces a fait accompli and to ignore the fact that you could come to Congress, receive authorization through legislation to go and negotiate, subject to ratification of a two-thirds vote in the Senate, is, in my view, the wrong way to go about divesting the United States of territory through the treaty-making process.

I think in the end if you go around the Congress on something that is as constitutionally clear as this is—and I think it is backed up by the cases—then you will not only be running the risk of disrupting our relationships with the Latin American States, but also this administration's relationship with the Congress.

I might add that this could lead to a complete disruption of the country so far as the people of the United States are concerned because the administration is trampling on the Constitution. You have gone around the Congress and have done something indirectly which you may or may not have been able to do directly had you gone directly to the Congress and received the constitutional mandate to implement this treaty through legislation.

Mr. HANSELL. Senator, if you are interested in further discussion on some of these cases, we will do it.

Senator HATCH. I would be happy to see what you have come up with. We have been looking for cases that would make exceptions to the well-established points of law that govern this situation. I do not think the cases you have cited are very convincing in lending support to the extraordinary treaty-making power you are claiming for the President.

Mr. HANSELL. Let us take a couple of them, one at a time. Let us take the *Sioux Indian* case. I will ask Mr. Feldman, who is very familiar with that case, to explain why we really think it sustains the point of view we have expressed.

May I ask Mr. Feldman to do so?

Senator HATCH. Certainly.

Senator ALLEN. Let us let the response to this question be the end of the questioning. We have already run beyond our time.

Mr. FELDMAN. I will be brief. The issue in the *Sioux Indian* case was the validity of a so-called executive reservation, an action taken by the President alone. There was no treaty involved in the case. The court expressly held—excuse me, the court expressly stated in discussing this issue that the holding was that the President could not by his action alone give rise to a compensable interest in the Indians when he later revoked that particular action which set aside certain of these lands temporarily for inclusion in the reservation.

But the court expressly stated that "where lands have been reserved for the use and occupation of the Indian tribe by the terms of a treaty or statute, the tribe must be compensated, if the lands are subsequently taken from them."

The case supports the proposition asserted by the executive branch.

Senator HATCH. That interpretation, it seems to me, would be inapplicable because Indians are not treated as foreigners. They are citizens of this country. They are treated as citizens.

Mr. HANSELL. The court's statement was "where lands have been reserved . . . by the terms of a treaty or statute . . .", the point being that the court did recognize that it could be done either by treaty or by statute.

Senator HATCH. I do not think there is any question it can be done by treaty or statute. Clearly it can be done by treaty so long as the territorial disposition has been authorized by act of Congress. But the fact of the matter is that it cannot be done by treaty without an authorizing act, that is, the President cannot cede U.S. territory by treaty alone. He must have the approval of Congress to do it.

Mr. HANSELL. By treaty.

Senator HATCH. But you have to have cession rights from the whole Congress according to article IV of the Constitution.

Mr. HANSELL. That is not what this case is saying.

Senator HATCH. Well, let us both look at this. I would be happy to have you submit anything in writing.

Mr. HANSELL. Certainly.

Senator HATCH. I would like you to submit this in writing to the committee, if you would. This would be in answer to this question:

What, in your view, are the constitutional limits of the treaty-making power and what is, and what is not, a proper subject for a treaty?

I would like to have your specific legal viewpoint on that. Let me repeat that:

What, in your view, are the constitutional limits of the treaty-making power and what is, and what is not, a proper subject for a treaty?

If you would be kind enough to give us that information and the benefit of your wisdom on that, I think it would be helpful to this subcommittee.

Mr. HANSELL. Certainly.

Senator HATCH. I personally want to express appreciation for your efforts today to enlighten the committee and for the testimony that you have given. I appreciated it and listened carefully to it.

Any other cases that you could give, we would be very appreciative to have because we have not found any other than the ones we have mentioned here. We have found lots of reasons not to believe that they established a clear precedent in light of *Story* and in light of the *Sioux*

Indian case and in light of past practice with respect to the Canal Zone.

So, we would like to have any additional information you could give to us in writing.

Mr. HANSELL. Certainly.

Senator ALLEN. So ordered.

[The Department of State subsequently responded as follows:]

As noted in the Legal Adviser's statement on July 29, the general rule is firmly settled that treaties may be concluded on any subjects appropriate for international negotiation. *Geofroy* v. *Riggs*, 133 U.S. 258 (1889). The treaty power does not extend to areas within the legislative authority of Congress that are expressly reserved by the Constitution to the exclusive jurisdiction of Congress. Thus, it is recognized that treaties may neither impose taxes nor directly appropriate funds. In addition, treaties must observe fundamental Constitutional norms including the protections of the Bill of Rights. See *Reid* v. *Covert*, 354 U.S. 1 (1957).

Senator ALLEN. We thank you very much. We appreciate your cooperation and patience. We feel that we understand pretty clearly the position of the State Department. We feel it will be up to the Congress to act accordingly.

Mr. HANSELL. Thank you, Mr. Chairman.

Senator ALLEN. I do have additional inquiries, and I will submit them to you in written form.

[The following inquiries and responses were submitted for the record:]

CHAIRMAN'S INQUIRY NO. 1

On pages 8 and 9 of your testimony, you present the proposition that power to dispose of federal territory and property by treaty is supported by transfers of land to Indian tribes. It is true that in our early history the United States dealt with the Indians by treaty. However, the principles of Indian land law are not only unique but also very complex. Treaties granted the Indians various types of interest in land. Some granted a fee simple interest; others granted or reserved only the right to the use and occupation of territories already possessed by the Indians (hence the use of the term "reservation").

Regardless of the nature of the grant to or acknowledgment of the rights of the Indian tribes, it is important to remember that the Indians were not regarded as sovereign independent nations but rather as 'wards of this nation' or 'in a state of pupilage' or 'dependent political communities'. Thus, the United States always retained the right to exercise the power of eminent domain in Indian lands. (*Cherokee Nation* v. *Southern Kansas Railway Co.*, 135 U.S. 641, 653–654, 1890.)

The Republic of Panama is a sovereign nation, and certainly any transfer of lands to Panama would be more conclusive and final than any transfer of lands to Indian tribes. For this reason, Article IV, Section 3, clause 2 of the Constitution does seem to require a delegation of authority from Congress, because a disposal to Panama would, in fact, be a *disposal* in the fullest sense of that term.

Please comment on this aspect of the issue.

DEPARTMENT OF STATE RESPONSE

Article 4, § 3, cl. 2 does not differentiate between dispositions which leave the property disposed of subject to the power of eminent domain and dispositions which place the property disposed of outside the reach of the power of eminent domain. Hence the Property Clause does not limit the scope of the treaty power in the second case more than in the first. As the Supreme Court has recognized that the power to make treaties with the Indian tribes was co-extensive with that to make treaties with foreign nations, *U.S.* v. *43 Gallons of Whiskey*, 93 U.S. 188, at 197, 23 L. Ed. 846 (1876, also reported sub. nom. U.S. v. Lariviere), the cases recognizing the validity of dispositions of land belonging to the United States by treaty with the Indian tribes lend judicial support to the concurrent nature of

the legislative power under Article 4, § 3, cl. 2 and the treaty power with respect to dispositions of property belonging to the United States.

CHAIRMAN'S COMMENT

We recognize that the United States dealt with the Indian tribes by treaty through most of the nineteenth century. However, that practice has been abandoned since the Indian Appropriations Act of 1872, and any conclusions drawn from Indian treaties are based on rather weak precedence.

In the last sentence of your response, you refer to cases recognizing the validity of the disposition of land and property by treaty. That statement is quite misleading, inasmuch as none of the cases that you have advanced in any way decide this issue or even comment on it, except possibly in *dicta*.

CHAIRMAN'S INQUIRY NO. 2

On page 10 of your statement, you discuss boundary treaties as supporting the principle that the executive may dispose of property by treaty alone. You provide several examples of such cessions and, as you know, there are other examples of resolution of American boundary problems by treaty. The Subcommittee does note, however, that in the examples you cite, the party with which we concluded the treaty did already claim full title to all property involved. For instance, in the settlement of the Oregon boundary problem in 1846, America was claiming land up to a parallel of 54° 40′ and the British were claiming territory down to the 42nd parallel. The eventual compromise solution settled on a boundary of 49°. As one noted historian has written, "On the basis of claims and possession, the English made the real sacrifice." (DeConde, A., *History of American Foreign Policy*, 1963, p. 174.) Once again, the cession of disputed territory in settling a boundary problem does not appear to be a proper precedent for cession of the Canal Zone and the property therein to the Republic of Panama. Although sovereignty in the Canal Zone may be disputed, the fact that the Canal Zone belongs to the United States is undisputed. (See *Wilson* v. *Shaw*, 204 U.S. 24, 27 S. Ct. 233, 1907.)

Please comment on the weight properly to be given treaties involving disputed boundaries.

DEPARTMENT OF STATE RESPONSE

Article 4, § 3, cl. 2 applies to all territory or property belonging to the United States whether or not claimed by others as belonging to them. As the clause applies to disputed boundary areas, Constitutional practice in respect of boundary settlements is, in our view, relevant to the general construction of the clause. Moreover, boundary treaties have ceded lands which were not disputed. For example, the 1970 boundary treaty with Mexico transferred land and improvements as a result of the relocation of the international boundary formed by the rectified channel of the Rio Grande. The treaty entered into force on April 18, 1972. Congress passed the American-Mexican Boundary Treaty Act of 1972 on October 25, 1972 "to facilitate compliance with the treaty," authorizing the Secretary of State, *inter alia*, to acquire all lands and interests in land required for transfer to Mexico as provided in the treaty.

CHAIRMAN'S COMMENT

In your response, you state that the Article IV power applies to all territory and property, whether or not disputed. That statement contradicts the writings of one of the foremost commentators on the treaty power. In his treatise, *Treaties, Their Making and Enforcement* (Washington, 2nd edition, 1916), Samuel Crandall wrote that "A treaty for the determination of a disputed line operates not as a treaty of cession, but of recognition." (See *Treaties* at p. 226.)

As to the Mexican boundary precedent, it is important to note that Article I, paragraph D, of the treaty you cited does in fact provide for "necessary legislation" as a precedent to a carrying out of the terms of the treaty. Again, as you note, the American-Mexican Boundary Treaty Act of 1972 (P.L. 92–549) authorized the Secretary of State to acquire lands and interests in lands, necessary for the transfer to Mexico as provided in the treaty. By that statute, the Congress then did affirm and authorized the conditional transfer proposed initially by treaty.

CHAIRMAN'S INQUIRY NO. 3

In *Sioux Tribe of Indians* v. *United States* (315 U.S. 317, 1942), the Supreme Court addressed the issue of whether executive orders in 1875 and 1876 reserved a compensable interest in land to the Sioux Indian Tribe. The Court found ". . . that there was no express Constitutional or statutory authorization for the conveyance of a compensable interest . . . and that no implied Congressional delegation of the power to do so can be spelled out from the evidence of Congressional and Executive understanding." (*Sioux* at p. 331.)

Those executive orders were found to have reserved only *use* of the lands to the Sioux Tribe. The Court ruled that the interest retained by the Indians under the executive orders could be terminated by the Executive or Congress without any obligation on the part of the United States.

In the reasoning leading to its decision in that case, the Court noted that a treaty or statute could create a compensable interest in lands in the Indians if those lands were subsequently taken from them by the government. However, while the Court did note that a statute would obviously be an expression of Congressional will, the Court specifically did not on the other hand imply that a treaty could convey land without an express or implied Congressional delegation of authority or without enactment of subsequent legislation to give effect to any treaty terms proposing a disposition of U.S. property. In fact, the Court, to the contrary, stated as follows:

> Since the Constitution places the authority to dispose of public lands *exclusively* in Congress, the Executive's power to convey interest in these lands must be traced to Congressional delegation of its authority. (*Id.*, at p. 326)" (Emphasis added.)

If the lands reserved for the use of the Indians are reserved pursuant to a statute, it is obvious that Congress has given its consent to the disposal. When lands are transferred by treaty or executive order, the Court reasoned that delegation of Congressional authority must be found. The Court stated further that such delegation of authority may be explicit or may ". . . be spelled out from long-continued Congressional acquiescence in the executive practice." (*Id.*)

The importance of the Sioux Tribe case, as related to the disposal of property by treaty, lies in the fact that the Court seems to have stated rather clearly that lawful disposal by treaty or executive order could be effected only if the Court could find express or implied Congressional delegation of the exclusive authority of Congress to dispose of property or territory belonging to the United States. We have been unable to find any such express or implied delegation of power by the Congress insofar as relates to the disposal of land in the Canal Zone to Panama. The Panama Canal Act of 1912 only grants to the Executive Branch the authority to acquire or exchange land, not the power to dispose of it.

Moreover, Congressional acquiescence with respect to past practice in the Canal Zone has permitted the Executive only to make minor boundary adjustments without obtaining express Congressional authority. In any event, the boundary adjustments made have tended to be in the nature of an "exchange" as authorized by the Act of 1912.

The Subcommittee, I am sure, would appreciate your views on the desirability or necessity of making any proposed transfer of territory to Panama contingent on Congressional approval in view of the obvious absence of such Congressional delegation of authority regarding lands in the Canal Zone.

DEPARTMENT OF STATE RESPONSE

The case of *Sioux Tribe of Indians* v. *United States*, 316 U.S. 317 (1942), did not deal with the relation between the treaty power and the Congressional power under Article 4, § 3, cl. 2. The issue in that case was whether the President had the power to convey to Indian tribes a compensable interest in lands belonging to the United States by executive order. The Court expressly stated that the Indian tribes could acquire a compensable interest "by the terms of a treaty or statute." The Court nowhere stated or implied that Congressional authorization or delegation would be necessary for a valid treaty, and the case cannot properly be cited for that proposition. It denied only the power of the President to pass title by executive order, despite dicta to that effect in prior cases cited in footnote 8 of the opinion. The statement that the executive's power must be traced to Congressional delegation refers to "executive order reservations," not to "treaty reservations."

CHAIRMAN'S COMMENT

We quite obviously differ in our reading of the Sioux Tribe decision, especially as regards the court's statement in *Sioux Tribe* that the power to dispose of public property is vested "exclusively" in Congress. But in any event, the fact does remain that when considering the Indian Appropriations Act of 1872, the House, the Senate, and the Executive clearly repudiated the treaty power as a vehicle for the conveyance of federal property and territory.

CHAIRMAN'S INQUIRY NO. 4

One might say that the essence of our disagreement in the proper approach to the interpretation of Article IV, Section 3, clause 2 of the Constitution is brought out in your comment on page 11 of your statement referring to the transfer of land and personal property to Japan in 1971. You state that the "transfers were made without implementing legislation apparently in reliance on the treaty or general statutory authority to dispose of foreign excess property." We also believe that those transfers were made on the basis of reliance on prior Congressional consent, specifically the Foreign Excess Property Disposal Act of 1947 and related statutes. However, in the case of the Panama Canal Zone, the House has tenaciously asserted its authority over the disposal of territory or property. The Senate too, in 1942, recognized that the House of Representatives had a role to play in any disposal of such territory or property. (See 88 Cong. Rec. 9267). A representative of the State Department told the Senate Foreign Relations Committee that transfer of all of the property ceded in the 1955 treaty with Panama required implementing legislation before the transfer could be effective. (Hearings on the Panama Canal before the Senate Committee on Foreign Relations, Exec. F., 84th Cong., 1st Sess., pp. 60–61.)

Transfers of property to Panama in the past have therefore relied on express or implied delegation of authority from Congress (just as the Ryukyu and Daito Islands transfer relied on general legislative or prior treaty authority). By not obtaining House consent for this transfer in the face of House insistence on its right to give such consent, the Department of State is, at the very least, putting the Executive's relationship with Congress in jeopardy. The House has been acknowledged to have a Constitutional role in the transfer of minor cessions of territory. Now that a major cession of property in the Panama Canal Zone is contemplated, the Executive appears to be attempting to ignore past practice by denying to the House of Representatives a role that has been established by past precedent. Moreover, evidence submitted to the Subcommittee thus far does indicate that the Executive Branch may well be assuming powers in excess of those permitted to it by the Constitution.

Please comment.

DEPARTMENT OF STATE RESPONSE

The Department of State has not yet been able to establish the extent to which the Executive Branch may have relied on the Foreign Excess Property Disposal Act of 1947, or other statutes, to implement the 1971 Ryukyu and Swan Island Treaties. However, it should be noted that both these treaties transferred certain lands or improvements directly upon entry into force.

We are not able to agree that a State Department representative told the Foreign Relations Committee that transfer of all of the property ceded in the 1955 treaty with Panama required implementing legislation before the transfer could be effective; the memorandum submitted by Assistant Secretary Holland is ambiguous on this point. Section 102.b of Public Law 85–233 recognizes that at least one parcel of property was transferred by operation of the Treaty.

CHAIRMAN'S COMMENT

We find nothing ambiguous in Assistant Secretary Holland's memorandum to the Senate Committee on Foreign Relations. The entire 1955 memorandum and pertinent dialogue reads as follows:

"IMPLEMENTING LEGISLATION

Senator MORSE. One last question: It appears from the testimony that you have given thus far that considerable legislation will be required to implement this treaty.

Do you think it would be possible for the Department of State to furnish the committee with a statement detailing what that legislation will have to be?

Mr. HOLLAND. Yes, we can, Senator.

Senator MORSE. If the treaty calls for legislation after the Senate has given its advice and consent, we ought to know something about the necessary legislation that will follow. That might conceivably have a bearing upon the Senate giving its advice and consent.

Mr. HOLLAND. We intend to submit such legislation to you, Senator.

Senator MORSE. Thank you very much.

[The information referred to follows:]

LEGISLATION REQUIRED TO IMPLEMENT PROPOSED NEW AGREEMENTS WITH PANAMA

Legislation will be required to implement the following provisions of the treaty and memorandum of understandings reached:

(*a*) *Article I*

Increase in the annuity.—The Department of State will request authorization and provision for the increased amount of annuity in its supplementary appropriation bill for the current year. Thereafter provision for the increased amount will be included automatically in the Department's appropriation requests. If it is the will of the Congress that the money for the increased payment be reimbursed annually to the Treasury by the Panama Canal Company, presumably section 246(e) of the Panama Canal Company charter would have to be appropriately amended.

(*b*) *Articles V, VI, and VII of the treaty and item 2 of the memorandum.*

Transfer of certain lands and improvements to Panama.—Authorizing legislation is required. Necessary replacements would require appropriations.

(*c*) *Item 1 of the United States undertakings in the memorandum of understandings reached*

Treatment of Panamanian labor in the Canal Zone.—Authorizing legislation is required for the exclusion of certain Canal Zone agencies from the Classification Act in order to fully implement the agreement regarding the establishment of a basic wage for given grade levels in Canal Zone employment and for the uniform application of the Civil Service Retirement Act to citizens of both countries employed in the Zone.

(*d*) *Item 5 of the United States undertakings in the memorandum of understandings reached*

Bridge across the canal at Balboa.—Legislative authorization and appropriation will be necessary. It should be noted, however, that while mentioned in the memorandum, this commitment on the part of the United States was originally undertaken in the 1942 general relations agreement."

I must say that your concept of ambiguity differs greatly from mine.

Senator ALLEN. Senator Hayakawa, we are delighted to have you come before the committee to give us the benefit of your views and expertise in this field. We are delighted to hear from you.

I suggest you proceed in such fashion as you desire.

TESTIMONY OF HON. S. I. HAYAKAWA, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator HAYAKAWA. Thank you, Mr. Chairman.

I appreciate very much this opportunity to present my views on the Panama Canal issue. The Subcommittee on the Separation of Powers ought to be commended for having arranged these hearings. The question of the future of the Panama Canal is of fundamental importance for our country and a broad public debate seems essential for keeping the American people duly informed. The hearings which provide knowledgeable experts with an opportunity to speak up in public are an invaluable contribution to a national debate.

I personally welcome the possibility of explaining my position on the Panama Canal more fully than I was able to do during the election campaign. My remark during the campaign, "We stole the Canal fair and square, we should keep it." was good for a laugh and it made headlines. [Laughter.]

This is perhaps more widely quoted than anything else I ever said in my life. However, it was intended as a witticism and generally understood as such.

Senator ALLEN. I understood it so, and I am sure Senator Hatch did.

Senator HATCH. Yes.

Senator HAYAKAWA. During the campaign it was not possible to go into the subject indepth. But the witticism contained some truth, I think. I am, therefore, happy to have this opportunity to discuss the subject in more detail.

I would like to explain. When doing so, I will first deal with the past. I shall take a quick look at the history of the canal and the legal implications of the treaty of 1903. I will then turn to the current negotiations and examine the arguments for a new treaty coming from the right. I shall question the deplorable methods of the present administration when it deals with Congress and the American people in this crucial matter. Finally, I will conclude my comments by listing the minimum requirements of a new treaty for which I could vote.

HISTORICAL BACKGROUND

In 1878, a French company under Ferdinand de Lesseps, the builder of the Suez Canal, received a concession from Colombia to build a canal across the Isthmus of Panama. The possibility that an important commercial route and a vital link might come under the control of a foreign power demonstrated to the American people the need for the construction and ownership of such a canal by the United States.

By 1889 the French threat had been removed by the bankruptcy of the De Lesseps Co. after an expenditure of about $300 million. In similar fashion, the Maritime Canal Co., an American corporation with a concession in Nicaragua, had abandoned its efforts in 1893 after 3 years of preliminary work.

Theodore Roosevelt, who became President in September 1901, apparently favored a canal through Nicaragua, especially since a group of American engineers reported that construction would be cheaper than in Panama. The bankrupt French company was reorganized, however, as the new Panama Canal Co.

Actually its sole reason for existence was the plan to sell its concession to the United States. Faced with the possibility that the United States might build the less expensive canal in Nicaragua, the French promptly reduced their price from $109 million to $40 million.

In June 1902, Congress passed the Spooner Act which authorized the President to secure a right-of-way across the Isthmus of Panama. If no agreement with Colombia could be reached, the President was to undertake negotiations with Nicaragua. Because of this possible alternative, the United States was able to negotiate a treaty with Herran, the Colombian representative in Washington. The Hay-Herran treaty provided the United States with a 6-mile-wide canal

zone against payment of $10 million and annual payments of $250,000. The treaty was approved by the U.S. Senate; but it was unanimously rejected by the Senate of Colombia which wanted a higher price.

Panamanians, who were then, of course, Colombian nationals, had never felt a strong attachment to the rest of the country. Isolated from the capital and centers of population by high mountains, the Isthmus of Panama had been left largely to is own resources. In the preceding three-quarters of a century since independence from Spain, Panamanian discontent had been erupted on a number of occasions into attempts to establish an independent state.

While the Colombian Senate debated, prominent Panamanians met to plot a course of action should the treaty be rejected. They were aided and abetted by the principal agent of the French company. Monsieur Bunau-Varilla who was intent on securing $40 million from the United States. From his headquarters in a New York hotel room, Bunau-Varilla supplied the conspirators with a proclamation of independence, a constitution, a flag of liberation, and instructions to start the uprising on November 3. I love the story of this wonderful plot.

On November 2, a U.S. warship, the U.S.S. *Nashville*, conveniently arrived in Panama. Actually, less than 1,000 persons participated in the bloodless revolt and it would have been easily suppressed had it not been for the American presence which prevented the landing of Colombian troops. The next day the new Republic of Panama was proclaimed. In quick succession, it was recognized by the United States, by the European powers, and—this is important—by all the Latin American Republics, with the sole exception of Colombia. Within a week, Bunau-Varilla was accepted as the Panamanian envoy to the United States, and on November 18 he signed the Hay-Bunau-Varilla treaty, the terms of which were identical to those rejected earlier by Colombia.

President Roosevelt remarked after the event, and I am quoting, "No one connected with this government had any part in preparing, inciting, or encouraging the revolution." The facts would seem to indicate otherwise, and I, therefore, consider my remark, "We stole it fair and square," appropriate. However, I must add an important caveat. We did nothing that was unusual or contrary to the public morality of those days. At the turn of the century all great powers behaved similarly; it was expected of them, and the speed with which the new republic was recognized by all governments indicates that we applied what were then standard practices.

In other words, I consider any feeling of national guilt on our part unwarranted and out of place. As the Romans used to say, "tempora mutantur nos et mutamur in illis." Times change and we change with them.

If there is any doubt about President Roosevelt's aims, it should be removed by scrutinizing the key sections of the Panama Canal Treaty of 1903. The crucial part of the language in article II reads as follows:

> The Republic of Panama grants to the United States in perpetuity the use, occupation and control of a zone of land and land under water for the construction, maintenance, operation, sanitation and protection of said canal of the width of 10 miles. . . .

Article III states:

> The Republic of Panama grants to the United States in perpetuity the use, and authority within the Zone mentioned . . . which the United States would possess and exercise if it were sovereign of the territory within which said lands and waters are located to the entire exclusion of the exercise by the Republic of Canada of any such sovereign rights, power, or authority.

Undoubtedly, the public debate of the Panama Canal issue will focus on these sentences. As I see it, they clarify an important aspect of our policies. The United States was not interested in the enlargement of American territory.

If the contrary had been the case, we could have concluded a brief treaty following the examples of the Louisiana or so-called Gadsden Purchase. An area stipulated under the treaty would have been simply ceded to the United States, and paid for by its Treasury. Clearly, this we did not want. We were not interested in acquiring more territory. We wanted to build a canal in the interest of our national security. We wanted to operate and defend it. Not more and not less, and this is what I had in mind when I said, "We should keep it."

In sum then, the paragraphs which I quoted demonstrate, that we were not guided by expansionist greed but by the justified need of national defense. Unfortunately, this very language of the treaty presents us today with a serious problem. On one side we find legal experts who demonstrate that we do have full sovereignty over the Canal Zone. On the opposite side there are equally qualified lawyers who tell us that our sovereignty is a delegated one and that Panama still has a residual sovereignty. I am not a lawyer, and I do not intend to get involved in this dispute. There is, of course, an important consequence of this controversy. If the United States has full sovereignty over the Canal Zone, then article IV, paragraph 3 of the Constitution will apply, that is, both Houses of Congress will have to vote on the issue.

On the other hand, if the Canal Zone cannot be considered U.S. property or territory, a two-thirds majority of the Senate will have to cast a decisive vote. Obviously, it is a primary purpose of the hearings to clarify this crucial point, and I hope that the subcommittee will be successful in this important endeavor.

I am coming now to the present negotiations, and I will examine, first, the principal arguments for a new treaty. It is being said that the canal is becoming unsuitable for present and future requirements. It is also being argued that if no agreement on a new treaty can be reached, the canal will be sabotaged. Third, guerrilla warfare will follow. And finally, it is argued that not only all of Latin America, but the entire Third World will be against us.

Frankly, I am unwilling to accept any of these arguments. First, if the canal is obsolete it can be brought up to today's technical needs. Actually, this is one of the topics of our current negotiations. Moreover, the underlying assumption that the future will see larger commercial and naval vessels is highly questionable. It is said in many quarters that these enormous oil tankers and certainly enormous aircraft carriers are obsolete for future needs in warfare. At present, opposite trends can be observed. Second, there has been no sabotage effort in the canal's long history, and I doubt that we will see this

change. Actually an uninterrupted operation of the canal is very much in Panama's economic interest. Third, I question the likelihood of guerrilla warfare. The potential for small terrorist groups to enter the zone, of course, does exist. It exists everywhere, actually, as it does right here in this building.

The terrorists could be recruited from radical elements in Latin America. We probably could see kidnapings, sniper fire, molotov cocktails, arson, and bombings. A large scale insurgency, however, seems unlikely. Panama is no Vietnam in size or resources.

Moreover, there is no nearby neighbor that is willing to aid in a liberation movement. General Torrijos probably knows better than anyone the tragedy which would follow from a quixotic guerrilla campaign and would move to prevent it. A terrorist war against the United States would mean that all life-sustaining revenues from the canal would end for a period of years.

As to world opinion, I am not very much concerned about objections raised behind the Iron Curtain or in the Third World. They are always denouncing us anyway. Naturally, the case of Latin America is different. However, it seems that most Latin American nations, while publicly supporting Panama, are privately reluctant to see the benefits of orderly U.S. administration transferred to an uncertain fate in the hands of an unstable Panama. We, therefore, must continue our honest efforts to reach an agreement, but at the same time we should not entertain any illusions. An outright surrender of the canal will not give us the respect or affection of the Latin American countries. On the contrary, it would be an incentive for more demands from other quarters.

Let me turn now to the arguments emanating from the right. Conservatives usually argue as if the 1903 Hay-Bunau-Varilla Treaty were a document set into concrete. In my judgment this is an untenable position. Against the background of the liquidation of all the colonial empires, it seems simply impossible to me to resist all change. There are certain aspects of our regime in Panama which are outdated and will have to give way.

Second, it is erroneous to consider our position in the Canal Zone identical with the one in Alaska, for instance. The provisions of the Panama Treaty are unclear and analogies are, therefore, obfuscating and misleading. And, finally, I cannot aline myself with those who reject dealing with a leftwing dictator like Torrijos. The facts are that nations as well as all of us have to deal on occasion with individuals of whom we disapprove. As I see it, this is just one of the fundamental facts of life. I, therefore, cannot subscribe to policies which distinguished between acceptable and nonacceptable dictators.

Mr. Chairman, I am coming now to the end of my remarks. But before stating my minimum terms for a new treaty, I would like to say a few words about the new administration and the methods it applies when dealing in foreign policy matters with Congress and the American people. In my opinion, they are outrageous.

We are faced with an issue of pivotal significance for our national security. Nevertheless, the administration proceeds with its negotiations in deep secrecy leaving the American people with its elected representatives completely in the dark. I understand, Mr. Chairman,

that the Department of State even was reluctant to provide a witness for these hearings. I think it ought to be made clear to the administration, once and for all, that it must not come to this body with a fait accompli, and that cooperation is a two-way street. If Congress is unable to participate in the takeoff, it will rightfully refuse to take part in the landing.

PROMISED OPEN DIPLOMACY

During the campaign, the Democratic candidate declared repeatedly that if he was elected, there would be open diplomacy. Six months have gone by since Jimmy Carter took office, but the Panama Canal negotiations are still treated as top secret. Where is the promised open diplomacy?

Mr. Chairman, let me close by giving you my terms for a new treaty. A short time ago four former Chiefs of Naval Operations sent a letter to President Carter. The key message in that letter was this:

> Under the control of a potential adversary the Panama Canal would become an immediate crucial problem and prove a serious weakness in the overall U.S. defense with enormous potential consequences for evil.

Evidently we must not allow this to happen.

I, therefore, would find it unacceptable if the executive branch through its actions preempted the issue, and Congress could only rubberstamp a fait accompli.

Moreover, I would find it unacceptable if the executive branch negotiated an agreement which would not fully retain control of the military defense of the canal and enable us to act promptly whenever there appears any challenge to such control.

I would find equally unacceptable any agreement which would lead to the inefficient operation of the canal and the imposition of an undue burden on American and world commerce by the operators of the canal.

And finally, I would find unacceptable any sudden and drastic changes of present operational and administrative procedures instead of a gradually evolving process.

Because we must have an orderly transition with administrative continuity and uninterrupted operation of the canal, any changes in responsibility of governance must be the product of a gradual evolution.

Thank you very much.

Senator ALLEN. Thank you very much, Senator Hayakawa. You have made a very fine statement. We appreciate your courtesy in appearing before the committee to give us the benefit of your views.

As I understand your testimony, you do not oppose a renegotiation of the Panama Canal Treaty.

Senator HAYAKAWA. That is true, Senator.

Senator ALLEN. But you do want it to be a treaty that is negotiated with the help and cooperation and understanding of the Congress; is that right?

Senator HAYAKAWA. Yes.

Senator ALLEN. You have set certain requirements that you feel that a treaty should meet. You would not favor a treaty that did not come up to the standards that you have specified; is that right?

Senator HAYAKAWA. You are quite right, sir.

Senator ALLEN. So it is conceivable that even though you do support the concept of a renegotiation of the treaty, the product and the method by which the product is achieved might be of such a nature and of such provisions that you could not support it; is that right?

Senator HAYAKAWA. That is correct, sir.

Senator ALLEN. Do you feel that any agreement that is reached in the form of a treaty should be subjected also to congressional approval as distinguished from the treaty approval by the Senate, as is required by article IV, section 3 of the Constitution?

Senator HAYAKAWA. I am not fully clear on the legal requirements there. Does that not revolve on whether or not it is interpreted that the Panama Canal Zone is U.S. territory? If it is, obviously a vote of Congress has got to be done. If not, then it is a matter of a treaty. That particular issue has not been resolved, as I understand it.

Senator ALLEN. Do you feel that your requirements for cooperation with the Congress might well include the requirement that the entire Congress pass on the question before it does become a fait accompli?

Senator HAYAKAWA. It is the practice, under the Constitution, of treaties with foreign nations to be confirmed by a two-thirds majority of the Senate.

Senator ALLEN. Yes.

Senator HAYAKAWA. I think that there is no particular reason in this case to depart from that practice if indeed we decide to go that direction. If there is something wrong with the treaty, we can vote against it. But I do not see that we need to change our methods of how to confirm a foreign treaty for the purposes of this particular treaty.

Senator ALLEN. The Constitution, of course, as you know and as you have cited, requires that the Congress must dispose of the property of the United States. If the Congress is not called upon to give its approval by statute, would that be cooperation with the Congress to the extent that you are going to require, in order to be in favor of such a treaty?

Senator HAYAKAWA. Yes; it would have to be. That is, as I stated in my prepared remarks, there is a legal question which I will not try to solve, as to whether the Canal Zone is indeed our property.

Senator ALLEN. If it is our property, then it ought to be conveyed by Congress; is that right?

Senator HAYAKAWA. Yes; indeed.

Senator ALLEN. Thank you very much.

Senator Hatch?

Senator HATCH. Senator, I appreciate your statement and your usual discerning viewpoints concerning the Panama Canal. One factor that you did leave out in the history—I am sure that was by oversight—is that in 1912, a Democratic administration was trying to make an issue of the matter with former President Theodore Roosevelt. Twenty-five million dollars was paid to Colombia as a result of what happened in the initial treaty involving the canal.

You would agree with me, would you not, that the original $10 million paid to the Republic of Panama and then the $25 million, if they

were based upon the present worth dollars, would be a high amount of money and many, many millions of dollars?

Senator HAYAKAWA. Yes.

Senator HATCH. We had people here last week who may well be for the treaty, but who made it very clear that they thought those payments were wholly fair and adequate for the day and age in which they were made.

I am wondering whether the issue of sovereignty that you have raised is quite as important as some seem to believe. It is important, but it may not be the argument that you may think that it is. I think everybody would agree that the Canal Zone is U.S. territory. What is sovereignty? We can talk about de jure sovereignty or de facto sovereignty. De jure sovereignty is the authority to change the fundamental laws. De facto would be that power which has the power to change the fundamental laws.

By these general principles of international law, I wonder if it is not clear that the United States acts as both de jure and de facto sovereign over the Panama Canal. If there is a residual sovereignty question—and I question whether there is—it remains a theoretical question. You might help us with that as time goes on and get some consideration as to those distinctions between de jure and de facto.

But I think you have hit the nail on the head. Since we do have sovereignty and own the territory, then we should have the approval of both Houses of Congress as well as a treaty ratified by a two-thirds vote of the Senate. I think that is a very important point being brought out by these particular hearings.

You have contributed to this, and I personally appreciate it.

Senator HAYAKAWA. Thank you.

Senator ALLEN. I have one further question referring to your statement in jest that, "We stole the canal fair and square, we should keep it." Well, actually, if we stole it from anybody, it was from Colombia, was it not, rather than from Panama? Is not that historical fact?

Senator HAYAKAWA. That is an important consideration. I had not thought of that. It was not Panama we stole it from.

[Laughter.]

Senator HATCH. Panama would not be here if that had not taken place. My point is that we have more than satisfied Colombia in paying $25 million which, if brought to present value, would be literally hundreds of millions of dollars.

Senator ALLEN. I believe history will show that the Senate approved the treaty with Colombia. Colombia did not approve it. Then Panama came into existence. I believe that is the historical fact; is it not?

Senator HAYAKAWA. Yes.

Senator ALLEN. Thank you very much. We appreciate your testimony.

Senator HAYAKAWA. Thank you.

Senator ALLEN. Our next witness will be Arnold Nachmanoff, Assistant Secretary of the Treasury for International Development, accompanied by Russell Munk, Assistant General Counsel for International Affairs, Department of the Treasury.

I have just been informed that Secretary Nachmanoff was not able to come.

Mr. MUNK. That is correct, Senator.

Senator ALLEN. We appreciate your attendance. We appreciate your courtesy in coming before the subcommittee. We look forward to your testimony.

TESTIMONY OF RUSSELL L. MUNK, ASSISTANT GENERAL COUNSEL FOR INTERNATIONAL AFFAIRS, DEPARTMENT OF THE TREASURY, ACCOMPANIED BY RICHARD M. GOODMAN, ATTORNEY-ADVISER, DEPARTMENT OF THE TREASURY

Mr. MUNK. Mr. Chairman, I am happy to have the opportunity this morning to testify before the Subcommittee on Separation of Powers. In your letter inviting a Treasury representative to testify, you expressed concern that the Senate be placed in a position to advise and consent with respect to any financial arrangements with the Government of Panama related to the proposed canal treaty. My statement addresses that concern.

At the outset I want to assure you on three counts:

First, the administration will, as it already has, keep Congress fully informed of the progress of treaty negotiations and any related matters.

Second, at the time the Senate is asked to act on the treaty, full information on all financial arrangements which have any relation to the treaty negotiations will be given to the Senate so that it can take these arrangements into account in its deliberations.

Third, the discussions with Panamanian representatives concerning financial arrangements in which Treasury representatives have participated have been exploratory in nature. No financial arrangements were offered to Panama in these discussions since the administration has not yet decided which financial arrangements should be proposed in the negotiations.

I would also like to make clear that our Government is not using the World Bank or the Inter-American Development Bank as an agent or go-between in its discussions with the Panamanians concerning financial matters related to the treaty. The World Bank and the IDB are independent international organizations. Any negotiations they have with Panama and any assistance they extend to Panama will not be a part of, or related to, any aspect of the treaty negotiations between the United States and Panamanian Governments.

I should also make clear that overall responsibility for canal treaty negotiations rests with the State Department. At the request of the President and the State Department, Treasury has been involved in certain analyses and very preliminary discussions with representatives of the Panamanian Government concerning possible financial arrangements. Treasury's role is primarily of an advisory nature.

In any event, the administration fully appreciates the necessity of keeping the Congress informed of the progress of the treaty negotiations and any related measures. It has had extensive consultations with Members of Congress on the negotiations, and as soon as types and amounts of financial arrangements are brought into clearer focus we will be consulting with Congress on them.

The Senate will be provided with the details of any and all economic arrangements agreed upon by the U.S. Government and the Panamanian Government when the proposed canal treaty is presented to the Senate for its advice and consent. It is too early to tell whether all such arrangements should be included in the proposed treaty, but, at the very least, the entire Senate and the House will be fully informed of any financial arrangements made in connection with the treaty by the U.S. Government.

The Senate will be able to take those arrangements into consideration when deciding whether or not to give its advice and consent to the ratification of the treaty. Further, any proposed measures which will require implementing legislation would, of course, be subject to congressional review and approval.

In summary, I cannot overemphasize the importance the administration places on the Senate's role concerning the treaty. It recognizes that without Senate support the efforts that have been made and will be made to negotiate a mutually satisfactory treaty with the Panamanians will come to naught. The administration has every intention of conducting the negotiations in a manner worthy of the full trust of the Congress.

This concludes my statement. Are there any questions?

Senator ALLEN. I appreciate your fine spirit of cooperation, Mr. Munk. The assurances you give us on three counts are certainly most reassuring.

I note the first of the assurances that you want to give us is that the administration "will, as it already has, keep Congress fully informed of the progress of treaty negotiations and any related matters."

Would you then be kind enough to tell us just what progress has been made in the treaty negotiations?

Mr. MUNK. As I also mentioned, the overall responsibility for the treaty negotiations is with the State Department. With respect to the financial arrangements, Treasury has been acting as an adviser. We do not have a final package yet. As of last evening, the package was still being considered. It had not gone to the President. He, of course, will make the final decision on it. I understand that at 9:30 this morning he was meeting with Panamanian negotiators and U.S. Government negotiators. I do not know what was on the agenda, but I do know that the arrangements have not been finalized. I think it would be premature for us to discuss these with Congress before we go further.

Senator ALLEN. About all you are advising us is that you are holding meetings; is that right?

Mr. MUNK. We advise that we are holding meetings. Also in your letter of invitation you asked about the involvement of the international banks.

Senator ALLEN. Yes. These negotiations have been going on way back into the other administration. It seems that no information as far as I know of has been given on the negotiations and how far they have progressed, and what we have offered, and what they have demanded, yet you are going to keep us fully informed of the progress of the treaty negotiations. I do not see that we are being informed of anything, as I say, except of the fact that at certain times certain

meetings are being held. That is about all Congress has been advised of; is it not?

Mr. MUNK. As I said, State is the agency responsible for consultations. I understand that they, in fact, have consulted with 90 Members of the Senate, including certain members of your committee, if not all of them. I do not know for sure.

So, from what I understand, I think State has been consulting extensively, and it intends to continue to do so in the future.

Senator ALLEN. I note that your second assurance, "at the time the Senate is asked to act on the treaty, full information on all financial arrangements which have any relation to the treaty negotiations will be given to the Senate so that it can take these arrangements into account in its deliberations."

That would indicate then that you have no intention of having any action by the other body; is that correct?

Mr. MUNK. We looked at the testimony of Mr. Hansell yesterday. I think we are in general agreement with it. Again, this is primarily a matter for the State Department. In preparing my statement, I noted that your letter talked in terms of a treaty, and focused on the financial arrangements and disclosure that you asked about.

Senator ALLEN. Are the financial arrangements going to be included in the treaty?

Mr. MUNK. We do not yet know what the impact of the financial arrangements will be. We anticipate that probably any financial arrangements directly related to the new relationship with respect to the canal will be included in the treaty. Other arrangements may or may not be included in the treaty.

But they will be on the table, on top of the table, when the treaty is presented for Senate action. If any of the other arrangements made are unsatisfactory to the Senate, then certainly the Senate can take them into account in deciding whether or not to ratify the treaty.

Senator ALLEN. But there is no intention of submitting the treaty to the House for its approval as part of the legislative process in enacting the laws; is that correct?

Mr. MUNK. That is primarily a decision for the State Department. I do not know that the Treasury Department has any thoughts contrary to what State is planning.

Senator ALLEN. This would be a matter to address itself to the executive end of the Senate under the treatymaking power; is that right?

Mr. MUNK. Yes.

Senator ALLEN. Have any representatives from the Department of the Treasury or from the International Bank for Reconstruction and Development or any of our other international banks had recent discussions with the Panamanian Minister for Economic Planning?

Mr. MUNK. Yes.

Senator ALLEN. Has any other agency of the executive branch had any such discussions?

Mr. MUNK. I should mention that there was an initial meeting, I believe, on the 27th or 28th of June with representatives of the executive agencies. Also attending that meeting, which was a general background briefing on the development situation in Panama, where the U.S. Directors of the International Monetary Fund, the World Bank,

and the Inter-American Development Bank. That was a background briefing. There were two subsequent meetings. The U.S. directors did not take part in those meetings.

But at all meetings there were representatives both of State and Treasury present.

Senator ALLEN. What was the general nature of these discussions?

Mr. MUNK. As I mentioned, at the initial meeting, Mr. Barletta gave a general background briefing on Panama's development plans and needs.

The second and third meetings were discussions of what might possibly be done by both parties with respect to those needs. Certainly our people were not empowered to put any specific proposals forward. We still do not have proposals. No agreements were made. They cannot realy be called negotiations.

PANAMA TO RECEIVE PROPERTY PLUS MONEY

Senator ALLEN. The thrust of these meetings is really to find ways and means of providing hundreds of millions of dollars to Panama for taking the Panama Canal; is that not about the size of it?

Mr. MUNK. I do not think we look at it quite that way. In the past we have been concerned with Panama's development needs and welfare. If we have a new treaty we will be just as concerned or even more concerned. We want to see them do well, and we want to do all we can to make sure the canal has a good home.

Senator ALLEN. Yes.

Panama is indebted to the American international banks, private banks, to the tune of $2.5 or $3 billion; is it not?

Mr. MUNK. I have a chart. I would not swear to the accuracy of it, but I think the total indebtedness is something over $1 billion. The biggest share of that is commercial banks.

Senator ALLEN. Over $1 billion that you know of?

Mr. MUNK. That is overall. The biggest share is the commercial banks. As I said, I would not swear to the accuracy of my chart.

Senator ALLEN. I have a statement from the Library of Congress, Congressional Research Service, which states:

> Another source in the Federal Reserve indicated that foreign branches of U.S. banks had claims of $1.886 billion on Panama at the end of 1976, while the March 1977 Treasury Bulletin indicated that domestic offices of U.S. banks had $886 million in short and long-term claims against Panama as of that date. Of this amount, only 13 percent were long-term claims. Adding the two figures results in $2.772 billion in claims on Panama by U.S. banks and their foreign branches.

Mr. MUNK. Does that include both public and private debts?

Senator ALLEN. No; it indicates it is all by U.S. banks and their foreign branches.

Mr. MUNK. On the Panamanian side, is that private borrowers in Panama?

Senator ALLEN. It indicates it is the Government of Panama. This letter is dated July 21, 1977.

I will insert a copy of that letter in the record at this time.

[Material follows:]

THE LIBRARY OF CONGRESS
Congressional Research Service

WASHINGTON, D.C. 20540

July 21, 1977

TO : Subcommittee on Separation of Powers
Attention: Quentin Crommelin

FROM : Economics Division

SUBJECT : U.S. Commercial Bank Loans to the Government of Panama

As we have discussed on the telephone, we are enclosing photocopies of different materials pertinent to the above-mentioned subject. There is a statement by Henry C. Wallich, Member, Board of Governors of the Federal Reserve System, dated March 23, 1977, to the House Subcommittee on Financial Institutions of the Committee on Banking, Finance and Urban Affairs, which includes a table on claims of U.S. banks on various foreign countries, including Panama.

We have also included a June 3, 1977 Federal Reserve press release which has tables on U.S. bank claims on selected foreign countries in 1976. Panama is included in the section on offshore banking centers on page 5 of the tables.

Another source in the Federal Reserve indicated that foreign branches of U.S. banks had claims of $1.886 billion on Panama at the end of 1976, while the March 1977 Treasury Bulletin indicated that domestic offices of U.S. banks had $886 million in short and long-term claims against Panama as of that date. Of this amount, only 13% were long-term claims. Adding the two figures results in $2.772 billion in claims

on Panama by U.S. banks and their foreign branches. This appears to be the number used by Governor Wallich in the attachment to his statement.

We are also including a photocopy of the World Debt Tables, Volume II, p. 117, which shows the external public debt position of Panama. Unfortunately, the table includes data only up through 1974. Conversation with a World Bank official revealed that 1975 and 1976 figures are in the process of compilation and some results are expected by the end of next week.

If you would like further assistance on this matter, please do not hesitate to contact us on 426-5750.

David Hoyt
Analyst in Banking and
Capital Markets

Mr. MUNK. My figures are from the Comptroller General, and they concern the central administration of the Government of Panama and the Panamanian Government agencies and state enterprises. It comes to something like $625 million.

MARKED INCREASE IN PANAMANIAN DEBTS

Senator ALLEN. That is a marked increase from 1975; is it not?

Mr. MUNK. Yes.

Senator ALLEN. Since only 13 percent of this money, according to the Congressional Research Service is long term, then it would seem that the international banks are in a position to demand their money back on a short-term basis, creating a financial bind on the part of Panama, which they hope to have alleviated in these negotiations with the United States; is that not correct?

Mr. MUNK. I have not heard of any pressure or influence being brought to bear by the commercial banks on the U.S. Government to reach a favorable agreement with Panama.

Senator ALLEN. I did not suggest that. I just said that Panama is in a bind as a result of these tremendous debts that they have. Is that not correct?

Mr. MUNK. I do not have the maturity structure. If they have lots of short-term debts coming due soon, then I would think they would probably be happy to have some money from any source.

Senator ALLEN. They might hope to get that out of the U.S. Treasury in these negotiations; would they not?

Mr. MUNK. Again, I would think if they could get some money from any source, they would be happy.

Senator ALLEN. I wonder why it is necessary to pay Panama to take over American property. Could you give us the theory behind that?

Mr. MUNK. Again, we are concerned about Panama's welfare. We think that they need development in the area of agriculture and energy. They import a lot of oil for thermal power generation. They have possible hydropower development that they could undertake. We are anxious, if we enter into this new relationship, that they get along all right.

Senator SCOTT. Are you more concerned about the interest of Panama than the interest of your own country?

Mr. MUNK. No.

Senator SCOTT. The conversation that I just interrupted would indicate that you are. I assume that you are an American citizen; are you not?

Mr. MUNK. I am.

Senator SCOTT. Thank you, Mr. Chairman.

Senator HATCH. You mentioned in your testimony that a range of options is under consideration for extending financial aid to the Republic of Panama. Inasmuch as you have not given us any specifics, would you at least identify for us the nature of the options being considered?

Mr. MUNK. I would hesitate to identify the nature of the options, because the President may have decided on a completely different set of alternatives.

Senator HATCH. The committee is interested in seeing the options which are being considered.

Mr. MUNK. Given the fact that we have not decided on anything, I do not believe I am able to give you the range of options this morning.

Senator SCOTT. Mr. Chairman, what does this statement mean, "that the administration will, as it always has, keep Congress fully informed? You say you are not able to tell us anything. Are you participating in the negotiations? Do you actually know yourself what is going on?

Mr. MUNK. As I said, the negotiations are proceeding——

Senator SCOTT. Are you a participant in the negotiations?

Mr. MUNK. No.

Senator SCOTT. Thank you.

Senator HATCH. Has anybody in the Treasury Department participated in these negotiations?

Mr. MUNK. We have had these discussions, preliminary discussions, on the matters which are outside the scope of the negotiations.

Senator HATCH. Have you participated in those?

Mr. MUNK. No.

Senator HATCH. Who does on the part of the U.S. Treasury Department?

Mr. MUNK. Mr. Solomon has participated in three meetings and Mr. Nachmanoff.

Senator HATCH. I understand he was requested to come.

Mr. MUNK. That is correct.

Senator HATCH. Is there any particular reason why he did not come today?

Mr. MUNK. The reason is that, in looking over the chairman's letter inviting us to appear, it appeared to us that the concerns that the Senator was worried about, that is, how the financial arrangements were going to be handled at the time of the decision on the treaty by the Senate, would be better addressed from someone from the General Counsel's office rather than Mr. Nachmanoff.

Senator HATCH. Mr. Chairman, I would suggest that we have Mr. Nachmanoff come over at that time. I think it would be helpful to the committee if he would testify. So you might mention to him, Mr. Munk, that we expect to hear from him, perhaps in September.

Mr. MUNK. Certainly.

Senator ALLEN. In your negotiations or plans for negotiations, has the Department of the Treasury or any other agency of the executive branch contemplated a note-swap with the Government of Panama to avoid the appropriations process of Congress?

Mr. MUNK. Do you mean from the Exchange Stabilization Fund?

Senator ALLEN. You suggest the agency. There are so many of them. You would have better knowledge of that than I.

Would you answer the question?

NOTE-SWAP

Mr. MUNK. We have not contemplated the note-swap.

Senator ALLEN. You are obviously familiar with the term note-swap. Has it been given discussion at all?

Mr. MUNK. To the best of my knowledge, no. I am virtually certain that I would know about it if it had been.

Senator ALLEN. What would a note-swap consist of then? Whether it is contemplated or not, how would it work?

Mr. MUNK. I take it you are talking about the swap agreements we do with various countries. We give them so much U.S. currency. They give us so much of their currency. We hold their currency, and they draw on our currency, and then they repay it. We give back their currency.

Senator ALLEN. Could it not also be accomplished by one of the executive branch agencies requesting the International Monetary Fund to purchase from the international banks the papers that they hold? I am talking about the Panama paper that they hold.

Mr. MUNK. The international banks have a system of what they call loan participations. You can buy from them a share of a loan.

The United States does not purchase such participations from any of the international banks.

I used to work for the Asian Development Bank. I believe that for all banks these participations are only sold to commercial banks and not to governments.

Senator ALLEN. But the Government could purchase the notes in their entirety; could it not?

Mr. MUNK. Theoretically, yes.

Senator ALLEN. You do not know of that being contemplated?

Mr. MUNK. I do not know, but I am sure I would if it were being contemplated.

PANAMANIAN NATIONAL INCOME VERSUS FOREIGN DEBTS

Senator ALLEN. Is it correct, from your study of the fiscal affairs of the Government of Panama, that the Government of Panama pays some 40 percent of its national income annually to carry interest on foreign loans?

Mr. MUNK. I have not studied that, but given the debt figures, I would not be surprised. I could not say for sure. Would you like me to supply it for the record?

Senator ALLEN. Yes. So ordered.

[Department of the Treasury response subsequently supplied follows:]

In 1976 about 38 percent of Panama's export earnings were required to service external debt. Since the dollar is used as a currency base in Panama, the ratio of debt service to the Panamanian Government's dollar receipts (which are essentially taxes plus foreign currency receipts from trade, service, and investment) is perhaps more meaningful in appraising its debt situation. This ratio was 32 percent in 1976, compared with 22 percent in 1975.

FINANCIAL BAIL-OUT

Senator ALLEN. Are you able to tell us how much money and over what period of years Panama is demanding that the United States pay or how much the United States has offered to Panama?

Mr. MUNK. No. I do not know anything about what the United States—the U.S. offer is still not put together.

Insofar as Panama is concerned, I do not know about the period of years. They have mentioned a figure, but that again is in the process of negotiations. I would not like to say what that is at this point.

Senator ALLEN. It seems strange to me that these negotiations could have been in progress for 3 to 5 years and still Congress, as far as they know, has not been given any information as to the exact status of the negotiations.

We do not know what has been demanded by one side, and what has been offered by the other side. As far as I know that information has not been disclosed, even though the statement is made that you desire to keep Congress advised and that you have had these conferences with Members of the House and Senate. There does not seem to be any concrete information coming out of those conferences. Is that correct?

U.S. TREASURY AS PAYMASTER

Mr. MUNK. In the discussions concerning the financial arrangements, Treasury's involvement began on the 27th of June. I do not know what the involvement of the other agencies has been. We have had three meetings since then. I would not call them negotiations. These were general discussions.

Senator ALLEN. In this year?

Mr. MUNK. Yes.

Senator ALLEN. That was the first time the financial arrangements had been discussed?

Mr. MUNK. The first time Treasury was involved; yes.

Senator ALLEN. In other words, up until that time the U.S. Treasury had not been brought into the picture in considering the subsidies or reparations or payments by the U.S. Government to Panama; is that correct?

Mr. MUNK. As far as I know, Treasury did not get involved until the 27th of June.

Senator ALLEN. It looks like the matter is getting fairly close to accomplishment if the paymaster has been called in to make the arrangements for the payment; is that correct?

Mr. MUNK. I think that they want to move expeditiously on this. Again, it depends on what the President thinks. He has not seen—as far as I know he has not decided upon what he wants to do.

Senator ALLEN. I must say that this is very important information. When the Treasury is called into the picture, it seems to me that this indicates in this air of mystery and secrecy about the negotiations that we are getting pretty close to an agreement for a payoff or payment, if payoff is an indelicate word. But we must be making headway.

To this extent, then, you have kept us informed by telling us that you have been called into the picture as of the 27th of June to make arrangements, I assume, to provide the necessary method of making this payment to Panama and whatever amount is agreed upon. Is that correct?

Mr. MUNK. Again, I would hope that what we are doing makes sense. Whether the President sees it that way remains to be seen.

Senator ALLEN. Is he going to tell you how much to raise?

Mr. MUNK. Yes. As soon as the President makes a decision on what he thinks might be a reasonable financial arrangement, then the State Department will be up here consulting with Members of the Senate.

Senator ALLEN. He will lay that before the House and the Senate?

Mr. MUNK. I do not know what arrangements State has for consultation, but they will be consulting with the Senate.

Senator ALLEN. Who would that be?

Mr. MUNK. Members of the State Department.

Senator ALLEN. Members of the State Department would be consulting?

Mr. MUNK. With Members of Congress.

Senator ALLEN. I see.

You have stated that these financial arrangements you felt would be a part of the treaty.

Mr. MUNK. We think that all that is directly related to the canal will be a part of the treaty. There may be other arrangements which will not be in the treaty itself. But any arrangements concerning Panama will be on the table by the time the treaty is taken up by the Senate. We will consult with the Senate on those arrangements, whether they are in the body of the treaty or outside it. They will all be on the table when the treaty is presented to the Senate for its advice and consent.

Senator ALLEN. The Senate alone would pass on it; is that correct?

Mr. MUNK. That is our understanding; yes.

Senator ALLEN. I believe that is all I have.

Senator Hatch?

Senator HATCH. Mr. Munk, has any official of the Treasury Department entered into any formal or informal negotiations with any representatives of the Panamanian Government in the context of past or present treaty negotiations?

Mr. MUNK. As I indicated, I think the Treasury's initial involvement in this began the 27th of June. We have had three meetings with representatives of the Panamanian Government. There have been discussions. We would not characterize them as negotiations.

Senator HATCH. This has been Mr. Nachmanoff who has been conducting these?

Mr. MUNK. No; Mr. Cooper, plus Mr. Solomon, our Under Secretary for Monetary Affairs, and Mr. Nachmanoff.

Senator HATCH. Mr. Nachmanoff would know as much about it as Mr. Solomon, do you think?

Mr. MUNK. I could not say that was the case. He has been to the meetings.

Senator HATCH. Mr. Chairman, it might be essential to have both Mr. Solomon and Mr. Nachmanoff at our next hearings. They have both been conducting these negotiations and presumably more will be done by the time we call them in.

Senator ALLEN. That will be fine.

Senator HATCH. Do you have any reason to believe that any Panamanian officials have been led to believe, or will be led to believe, that certain economic assistance to them will be forthcoming following the conclusion of the treaty negotiations with them?

Mr. MUNK. No. I think they understand the treaty process and the appropriation process. I do not think they have been led to believe that there is anything automatic upon conclusion of that.

Senator HATCH. Has the Treasury Department received any communication at all from any representatives of the banking industry in support of the new treaty with Panama?

Mr. MUNK. I know of none, but I am not in a position to know that.

Senator HATCH. Would you check that out and supply any communications that you have received from any banking institution or any representatives of any banking institution or any representative from the banking industry?

Mr. MUNK. I will check that out, and we will indicate whether we have received any.

Senator HATCH. We would like to have any communications from anybody of that posture.

Senator ALLEN. So ordered.

[The Department of the Treasury subsequently responded as follows:]

The Treasury Department has not received any communication from any representative of the banking industry in support of or even concerning a new treaty with Panama.

Senator HATCH. Has the Treasury Department discussed with representatives of the Panamanian Government the subject of a mutual exchange of notes or financial instruments between the United States and Panama?

Mr. MUNK. No; to the best of my knowledge, no. I am quite sure I would know about it had there been any.

Senator HATCH. You will check into that and if it varies, you will immediately let us know?

Mr. MUNK. Yes.

INTERNATIONAL BANKS INVOLVEMENT IN TREATY NEGOTIATIONS

Senator HATCH. There has been a great deal of testimony which has been heard concerning the constitution question as to whether the Executive or the administration may, by treaty, dispose of U.S. property without prior authorization of the full Congress.

But there is another constitutional issue at stake concerning the separation of powers' doctrine of the Constitution which has not been discussed.

I believe that this particular constitutional question involves the Treasury Department. This would be my question:

Constitutionally speaking, is not the Constitution of the United States, which requires money to be appropriated by Congress, violated when a loan package or a loan guarantee is made a part of the context of the treaty negotiations?

Does the treatymaking power of the Chief Executive include the power to spend U.S. dollars that were intended by Congress to be used in international banks?

Mr. MUNK. You are speaking of the U.S. contributions to the World Bank and that sort of thing?

Senator HATCH. Any loan package or loan guarantee with relation to Panama which becomes a part of the treaty negotiation context.

Mr. MUNK. Let me address the international banks I mentioned. Those banks are not involved in these negotiations. Nothing that they do with respect to loans to Panama will be at the behest or request of the U.S. Government. It is completely separate.

Senator ALLEN. Yet you stated a minute ago that the U.S. Executive Directors of several international financial institutions were in fact present during Treasury negotiations with the Panamanian Minister for Economic Planning. I suppose they were present as a courtesy only.

Senator HATCH. Yes; that part seems fairly obvious, so, would you, Mr. Munk, answer the other aspect of it?

Mr. MUNK. The other aspect is that if, within the financial assistance package, there is a need for money from the U.S. Government, then the fact that we have concluded the treaty does not obviate the necessity of following the appropriations process.

Senator HATCH. Many have argued that in article IV, section 3, clause 2 it says that before you can divest U.S. territory or property, you have to have an act of Congress. You have the consequent concern that if a treaty is entered into, thereby bypassing the Congress, you then have a fait accompli.

But if we violate that article, by bypassing the Congress, is the Congress put in the position of whether it has to support the administration because you have already done it, and the fait accompli is accomplished, and the Panamanian troops are in the zone? If we do not do it, we are going to have poor relations with the Latin American nations and certainly with Panama.

Does not that same argument apply if you come to Congress after a fait accompli occurs and say, "Well, we have agreed to give Panama blank amount of dollars."

Mr. MUNK. You do not think that is guarded against by the treaty ratification process?

Senator HATCH. Not at all. The constitutional question is whether or not the President even has the authority to get down and negotiate a cession of U.S. territory to another nation, not U.S. citizens or Indians apparently, without a bill from Congress authorizing negotiations.

Then, you would assume that he has the bill authorizing negotiation. Then he would have to come back and get ratification by two-thirds of the Senate. This is the argument that has been made by a number of Constitution experts, which State Department attorneys have sought to refute. They offer the argument they have the right under the Constitution, that is, the concurrent jurisdictional right to get down there and enter into a treaty which just needs ratification by the Senate.

If the former argument of the constitutional authority is correct that they cannot do it without a bill from Congress, then would not the same rule apply to a treaty with provisions for economic aid. Can a treaty appropriate money?

Mr. MUNK. I will have to be corrected by my constitutional law expert here, Mr. Goodman. It is my understanding in the past that a treaty that provides for a payment of money, that is regarded as authorization. On the basis of that authorization appropriations are sought. That has been the practice in the past, according to my understanding.

Senator HATCH. That is the point I am making. Let us assume that you get the treaty which authorizes, let us say, $100,000 to the Re-

public of Panama. You admit you have to come back to the Congress to receive the appropriation.

But the other side of the coin is this. If the fait accompli is already accomplished, because the President has gone around Congress or the administration or the State Department, or altogether they have gone around the Congress to begin with, then is it not a useless act?

Mr. MUNK. I do not think so, because I think it is not a fait accompli until the Senate advises and consents to the ratification of the treaty.

Senator HATCH. There are those who will argue, perhaps somewhat persuasively, to the contrary that if an agreement is entered into by bypassing the Congress at the inception, that there will be Panamanian troops within the zone within a matter of a few hours after the agreement is announced, with or without ratification of the Senate and with or without a congressional mandate. This would enable the President to give away U.S. territory in violation of article IV of the Constitution.

Let me just ask you this. If there is just a loan package here, do you think the Congress would have to agree through legislation?

Mr. MUNK. To the loan package?

Senator HATCH. Yes.

Mr. MUNK. Unless there is existing authority elsewhere, then, yes, they would have to.

Senator HATCH. Have the poor financial conditions of Panama had any influence on treaty negotiations, to your knowledge?

Mr. MUNK. Certainly, in the discussions with the Panamanians in which Treasury has participated there has been a concern for Panamanian development in various areas, such as agriculture and energy. Those areas have been of particular concern and have been taken into account.

Senator HATCH. Let us put it this way. In view of the fact that the Panamanians have the highest per capita income in all of Central America, has anybody at the Treasury Department made any determination or any consideration as to how much financial assistance or economic assistance they really need, assuming that a treaty is entered into, along the terms that we have been reading in the newspapers?

Mr. MUNK. There is an office which has been looking into this. I cannot say from my own personal knowledge that they have considered it specifically, but I believe they have.

Senator HATCH. Would you check into that and give us the benefit of your personal knowledge on that? Would you write to us and let us know exactly?

Mr. MUNK. Certainly, we will indicate whether we have taken that into account.

Senator ALLEN. So ordered.

[The Department of the Treasury subsequently responded as follows:]

Panama's relatively high average per capita income (approximately $1,375 per year) is one of the factors Treasury took into account when considering possible financial arrangements with Panama. It also took into account a number of other factors, such as Panama's present growth rate and its development potential. It should be noted that Panama's per capital income is boosted by the earnings of workers in the Canal Zone, and that per capita income is much lower in other parts of the country (for example, in Beraguas, where per capita income is only about $220).

Chairman's Comment. Per capita income is by definition an average, it varies widely by region or city in virtually all countries, including the United States. The issue is the appropriate level of foreign development aid for Panama, if any, when such aid is weighed against proposed U.S. support for far less developed countries also located in Central America. Development aid ought not be confused with reparations or a financial bail-out undertaken in connection with a new Canal Treaty.

Senator HATCH. How much time do you need to reply for these replies you are not prepared to make today?

Mr. MUNK. The middle of next week.

Senator HATCH. Thank you, we appreciate that.

How are we to make sure that any new canal arrangement that is made that the money is not going into the pockets of the Panamanian National Guard?

Mr. MUNK. That, of course, would depend on the nature of the assistance, the financial arrangement offered. If, for example, there was a development project that was financed or if we helped on the financing of that development project, then there are ways that you can assure that disbursements are made directly to contractors and suppliers. In that way, you can assure that the money is not going into the hands of the national guard. It depends on the type of assistance that is given.

Senator HATCH. Do you know if any consideration has been given as to what Panama might owe for the cession, assuming that takes place, of more than $1 billion of U.S. Government property?

Mr. MUNK. Would you repeat that question?

Senator HATCH. Do you know if any consideration has been given to our Government concerning what Panama might pay to us as a result of the cession, assuming it takes place, of more than $1 billion worth of U.S. Government property?

Has that entered into negotiations, to your knowledge?

Mr. MUNK. The negotiators are trying to put together as good a package as possible. Certainly we recognize that for a package of that nature you have to look at both sides of the story, as Senator Scott reminded me a few moments ago. We are certainly mindful of both the U.S. interests and the Panamanian interests.

NEW CANAL

Senator HATCH. Has the construction of a new canal been discussed as a part of a development package for Panama?

Mr. MUNK. To the best of my knowledge the discussions with Treasury representatives on the financial package have not included that. I cannot say about the general negotiations.

Senator HATCH. From the Treasury's standpoint, you do not know?

Mr. MUNK. That is correct.

Senator HATCH. That is all I have.

Senator ALLEN. Senator Scott?

A DIFFICULT POSITION

Senator SCOTT. Thank you, Mr. Chairman.

Mr. Munk, you are put in a difficult position, I believe, to come here and attempt to testify before this committee when you have not

participated directly in the negotiations. Frankly, I am not the slightest impressed by the statements that you have made. It is contradictory when you say that the administration will and always has kept the Congress fully informed. This is not true.

I believe that you have indicated that you have prepared your statement today. I appreciate you being here. I appreciate your sharing your thoughts.

Mr. Chairman, I do not believe we can get any more facts or information out of this witness. I have no more questions.

Senator ALLEN. Thank you very much.

Mr. Munk, we thank you very much. We appreciate your testimony and your courtesy in coming before the committee and giving us the benefit of your views.

Congressman Flood, who was scheduled to testify at this time, has sent word that he is with the Appropriations Committee in the House. He has sent a written statement along with other relevant material, and we will ask that it be inserted in the record at this point.

[The material follows:]

DANIEL J. FLOOD
11TH DISTRICT, PENNSYLVANIA

COMMITTEE:
APPROPRIATIONS

CHAIRMAN, SUBCOMMITTEE ON LABOR, HEALTH, EDUCATION, AND WELFARE

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Congress of the United States
House of Representatives
Washington, D.C. 20515

HOME OFFICE:
1015 UNITED PENN BANK BLDG.
WILKES-BARRE, PENNSYLVANIA
ZIP CODE: 18701
PHONE: AREA CODE 717
829-3443

WASHINGTON OFFICE:
108 CANNON BUILDING
ZIP CODE: 20515
PHONE: AREA CODE 202
225-6511

MISS HELEN M. TOMASCIK
EXECUTIVE SECRETARY

STATEMENT OF HONORABLE DANIEL J. FLOOD
A REPRESENTATIVE IN THE CONGRESS
FROM THE STATE OF PENNSYLVANIA

Mr. Chairman, as an introduction, I wish to say that my interest in the problem of the Panama Canal started during my early youth when ex-President Theodore Roosevelt used to be an occasional house guest at my grandfather's home in Hazleton, Pennsylvania. During those years, I listened many hours to that great American leader describe the difficulties that he faced in launching what was then, and still is, one of the greatest industrial enterprises in history. He naturally became my youthful ideal and created an interest on my part in the canal question that has increased over the years. It has indeed been a privilege since being a member of the Congress to have been an instrument for protecting that vital asset of the United States.

Instead of making a long and detailed statement, I ask that the following be appended to my testimony:

Statement before the Sub Committee on ~~Foreign~~ Inter American Affairs, September 22, 1971.

Address on "New Panama Canal Treaty Report: Fallacies Clarified and Constructive Program Proposed". Congressional Record, September 9, 1976, p.p. H9657-60.

H. Res. 92, 95th Congress

H. Res. 1587, 95th Congress.

Panama Canal-Sovereignty and Modernization: Memorial to the Congress, 1975.

The Panama Canal is an inexhaustible subject on which the volume of writings is stupendous. Yet when reduced to their essentials the crucial questions are relatively brief and simple. They are: first, retention by the United States of its undiluted sovereign control over the Canal Zone; and second, the major modernization of the existing canal under existing treaty provisions.

For clarifying and making definite the question of U.S. sovereign control over the Canal Zone, strongly supported resolutions have been introduced and they are identical with H. Res. 92, 95th Congress, which was published in the Congressional Record, April 21, 1977, p. H. 3414.

For providing for the major modernization of the Panama Canal, H.R. 1587, co-sponsored by Chairman John M. Murphy of the House Committee on Merchant Marine and Fisheries, Representative M. Gene Snyder and myself, was introduced and published in the Congressional Record, April 26, 1977, p. H 3595-97.

In the course of my studies of interoceanic canal problems, I have consulted the best informed authorities that I could find. These included experienced engineers and geologists, marine biologists, Panama Canal pilots and other navigators, lawyers, and distinguished officers of the Armed Forces with high command backgrounds.

From a study of the evidence, it is clear that when the canal question is evaluated from its most significant angles, diplomatic, engineering, operational, economic, legal, environmental and defense - that the only common sense solution of the problem of increased transit facilities is the major modernization of the existing Panama Canal under the well known and strongly supported Terminal Lake-Third Locks Plan. This proposal was developed in the Panama Canal organization as a consequence of World War II experience and won the approval of President Franklin D. Roosevelt as a post war project.

It is authorized under existing treaty provisions, which authorize "expansion and new construction", and thus the matter does not require the negotiation of a new treaty. (Congressional Record, July 24, 1939, p. 9834.)

Such modernization, on which more than $171,000,000 has already been expended, would improve the maintenance and operation of the Canal enormously, bring huge economic benefits to Panama, and serve interoceanic commerce by increasing canal capacity for larger vessels.

As to the Constitutional question involved, the Canal Zone is "unincorporated territory of the United States," which was constitutionally acquired pursuant to the Spooner Act of June 28, 1902. Title to all privately owned land and property in it was also acquired by the United States by purchase from individuals. Contemporary writers, such as Admiral A. T. Mahan, Lord James Bryce, William H. Taft and others in responsible positions, refer to the Canal Zone as having been "ceded" to the United States. Colombia, the sovereign of the Isthmus prior to November 3, 1903, has recognized the title as vested entirely and absolutely in the United States.

As I have often stated, under Article IV, Section 3, Clause 2 of the U.S. Constitution the power to dispose of territory and other property of the United States is vested in the Congress, which includes the House of Representatives, and not in the treaty power. Would not the surrender of the Canal Zone without prior authorization by the Congress serve as a precedent for negotiating for the surrender of other territory of the United States?

In summation of proposals that I have made after their most careful consideration, I would urge the following:

1. Adoption by the Senate and House of resolutions re-affirming and making definite the historic U.S. policy for the perpetual undiluted U.S. sovereign control over the Canal Zone;

2. Termination of the present treaty negotiations:

3. Enactment of pending measures providing for the major modernization of the existing canal under existing treaty provisions;

4. Authorization for the election of a non-voting delegate in the Congress by U.S. citizens residing in the Canal Zone; and

5. Reactivation of the U.S. Navy's Special Service Squadron with home base in the Canal Zone.

Mr. Chairman, the people of the United States are not being beguiled by current propaganda for surrender of the Canal Zone, which has been featured by monumental deceptions. Instead, the current national debate is serving as a catalyst for the restoration of the national will of our country as a great power in the struggle for the defense of freedom and civilization. In this struggle, the Panama Canal is a focal issue for control of the Caribbean-Gulf of Mexico basins and upon the outcome could well determine the survival of the United States as a free and independent nation.

Mr. Chairman, because the proposal for a tidal lock canal at Panama, widely known as the "sea level" project, was made to this sub committee on July 22, I wish to make brief comments about it.

First, it should be understood that the idea of such canal design at Panama is not new but old. Historically, its advocasy, which is based primarily upon the alleged vulnerability of the

of the existing Canal, comes up periodically in what has been aptly described as a "hardy perennial."

In 1905-06, during the "battle of the levels", its supporters used the danger of "naval gunfire" as their justification.

In 1939, prior to World War II, they stressed the danger of "enemy bombing".

In 1945-48, its proponents held that "vulnerability to the atomic bomb" dictated construction of a "sea Level" type canal for reasons of "security and national defense."

In 1964, its advocates argued that "two sticks of dynamite" could destroy the present canal.

In 1970, they contended that the alleged "vulnerability" of the existing canal to "many forms of attack" required a tidal lock design.

In 1974-75, its supporters stressed that the dangers of "guerilla warfare" and even "earthquakes" required construction of the "sea level" type.

The only new points in support of the "sea level" proposal are the use of different "bugaboos." Its advocacy is primarily based on the fallacious assumption that it is possible to construct a canal of "indestructible proportions." The advent of nuclear weapons has negated all such assumptions, for any canal project, regardless of type, is vulnerable to such attack. The true criteria for canal design are not passive defense measures in its construction but "ease and safety of navigation" and this test leaves no doubt as to what is required at Panama.

As to the transit of tankers with Alaska oil to the East Coast that is one of the points that I have repeatedly stressed as a crucial reason for prompt authorization for the major modernization of the existing canal under existing treaty authority. Such modernization would cost only a fraction of a sea level project and not involve treaty complications, which are paramount considerations.

When the 1947 Sea Level Report under Public Law 280, 79th Congress, recommending only a sea level project in the Canal Zone near the existing canal was transmitted to the Congress by President Truman, it failed to receive Presidential approval. He forwarded it without comment or recommendation and the Congress took no action.

When the 1960 report of an independent inquiry, under the authority of the House Committee on Merchant Marine and Fisheries was submitted, it opposed the construction of a "sea level" canal in the Canal Zone, as previously recommended in 1947, because of the danger of massive slides involving a "long interruption to traffic" (H. Rept. No. 1960, 86th Congress, p. 5.)

When the 1970 report under Public Law 88-609, 88th Congress, as amended, was submitted to the President, it recommended only a sea level project in the Republic of Panama about ten miles west of the existing canal.

The 1947 and 1970 reports, costing about $6,000,000 and $22,000,000, respectively, were not the products of independent broadly based commissions, subject to Senate confirmation, but of Executive appointed consultants to justify pre-determined decisions of a small professional and industrial group.

When the canal problem is evaluated from all its significant angles, the solution is not surrender of U.S. sovereign control over the Canal Zone to Panama, any other country or international organization, and the construction of a costly new canal of so-called "sea level" design. As previously stated, it is the completion of the major modernization of the existing canal under existing treaty as provided in H.R. 1587, on which work more than $171,000,000 has been expended.

In this connection, Mr. Chairman, the proposed major modernization would retain the fresh water barrier between the Atlantic and Pacific oceans and thus continue to protect Atlantic waters from intestation by the Pacific sea snake, the crown of thorns starfish and other marine biological hazards. Respected scientists consider the sea level proposal as the environmental challenge of the century.

Because of these marine hazards, in 1975 ten international environmental organizations announced their intention of opposing any treaty with Panama that authorizes a canal of "sea level" design. A copy of their statement is attached. These scientists, as well as experienced engineers, geologists, economists, navigators, including Panama Canal pilots, and nuclear warfare experts, have strongly supported major canal modernization as the proper course for the Congress to take.

PANAMA CANAL, 1971

WEDNESDAY, SEPTEMBER 22, 1971

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FOREIGN AFFAIRS,
SUBCOMMITTEE ON INTER-AMERICAN AFFAIRS,
Washington, D.C.

STATEMENT OF HON. DANIEL J. FLOOD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. Chairman, as a former member of the Committee on Foreign Affairs with assignment to the Subcommittee on Inter-American Affairs when first coming to the Congress, I am happy to be with you again on the vital interoceanic canal question—a subject of world importance destined to receive much attention in the future.

BASIS FOR DEEP INTERESTS IN INTEROCEANIC CANAL PROBLEMS

For many years I have been studying Panama Canal history and problems and made numerous addresses in and out of the Congress on this complex matter. The deeper that I have delved into it the more I have been impressed with the vision and wisdom of those great leaders, who, in the early part of the century formulated our Isthmian Canal policies. They were Rear Admiral John G. Walker, John Bassett Moore, Secretary of State John Hay, Secretary of War William Howard Taft, John F. Stevens, George W. Goethals, and above all, President Theodore Roosevelt.

Because many of my colleagues and others have asked me what is the explanation for my long time interest in interoceanic canal problems, I wish to say that during my boyhood in Hazleton, Pennsylvania, ex-President Roosevelt used to be an occasional house guest in my grandfather's home. He spent many hours describing how the Canal Zone was acquired and his problems in launching the construction of the Panama Canal, which he viewed as comparable in geo-political significance with the Louisiana Purchase. Thus he became my youthful ideal and created a lifetime interest on my part in Isthmian Canal policy questions for which I have always been grateful.

CANAL ZONE AND PANAMA CANAL INSEPARABLE

The Panama Canal enterprise consists of two inseparable parts: (1) the Canal itself, and (2) its absolutely necessary protective frame of the Canal Zone territory. The two great canal issues now before the nation are: (1) the transcendent key issue of retaining United States undiluted sovereignty over the Canal Zone and (2) the important project of modernizing the existing Panama Canal by the construction of a third set of larger locks for larger vessels adapted to include the principles of the strongly supported Terminal Lake Plan, which was developed in the Panama Canal organization as the result of World War II experience. All other issues, however important, are irrelevant and should not be allowed to confuse or further delay proper consideration of the two pertinent ones.

Unfortunately, the handling of the two principal issues has been greatly complicated by radical Panamanian attacks on U.S. sovereignty over the Canal Zone and the exhumation of the corpse of the old controversy over types of canal high level lake lock versus sea level tidal lock. Because of the prime importance of the question of sovereignty, a knowledge of the history of its evolution is essential for reaching wise decisions.

EXCLUSIVE U.S. CONTROL IN PERPETUITY BASED ON HISTORY

The present status of the Canal Zone territory traces back to the 1901 Hay-Pauncefote Treaty between the United States and Great Britain that ended half a century of conflict over canal routes. In line with that agreement, the United States made the long range commitment to construct and operate an Isthmian canal under its exclusive control in accordance with the rules set forth in the 1888 Convention of Constantinople for the operation of the Suez Canal.

At the same time that the Hay-Pauncefote Treaty was being negotiated, our government was conducting a major investigation by an Isthmian Canal Com-

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mission for Exploration with Rear Admiral Walker, one of our ablest naval officers of his time, as president. In the supplementary report of that commission on January 18, 1902, recommending the construction of the Panama Canal, it made the following highly significant recommendation that merits study:

"The grant (for an Isthmian Canal) must not be for a term of years, but in perpetuity, and a strip of territory from ocean to ocean of sufficient width must be placed under the control of the United States. In this strip the United States must have the right to enforce police regulations, preserve order, protect property rights, and exercise such other powers as are appropriate and necessary." (Sen. Doc. No. 123, 57th Congress, 1st Session, p. 9.)

The reason for this recommendation was that this commission had studied Isthmian history and foresaw that only by such exclusive control could the project for an Isthmian canal be successfully constructed, maintained, operated and protected.

What did our government do? Under the dynamic leadership of President Roosevelt, the Congress passed the Spooner Act, approved June 28, 1902, authorizing the President to acquire by treaty with Colombia the perpetual control of the needed strip across the Isthmus and to construct thereon, and to "perpetually maintain, operate and protect," the Panama Canal. It also provided, in event of inability to secure the necessary strip from Colombia, for obtaining the needed territory for the construction of a Nicaragua Canal.

U.S. ACQUIRES EXCLUSIVE SOVEREIGN CONTROL OF CANAL ZONE, 1904

Events developed quickly. When the Colombian Senate failed to ratify the Hay-Herrán Treaty of January 23, 1903, Panamanian leaders, fearing that the Canal would be lost to Nicaragua, decided to secede from Colombia and thus enable the United States to make the canal treaty with Panama instead of Colombia.

In the resulting convention of November 18, 1903, following the Panama Resolution of November 3, Panama granted to the United States in perpetuity the "use, occupation and control" of the Canal Zone territory for the "construction, maintenance, operation, sanitation, and protection" of the Panama Canal with full "sovereign rights, power and authority" within the Zone to the "entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power or authority." This was the indispensable agreement under which the United States undertook the great task of completing the construction of the Panama Canal and its subsequent operation and defense, which is binding on the United States as fully as on Panama. (Hay-Bunau-Varilla Treaty, Articles II and III, quoted in *Foreign Relations*, 1904, pp. 543–51.)

The terms of this treaty were not accidental. Our leaders at that time had studied the history of the Isthmus and understood the problems that would be involved in such undertaking in a land of frightful disease and endemic revolution. They realized that the United States could not accept responsibility without complete authority as best stated in Article III of the 1903 Treaty. Just as the provisions of this treaty bind the United States in perpetuity to maintain, operate and defend the canal, they are likewise binding on Panama to recognize their validity. Moreover, except for the prompt recognition by the United States of the independence of the Province of Panama following the Panama Revolution of November 3, 1903, the Republic of Panama could never have survived and the Panama Canal would never have been constructed. (For additional information see Earl Harding, *The Untold Story of Panama*, New York: Athene Press, 1954.)

U.S. ACQUIRED OWNERSHIP OF ALL PRIVATELY OWNED LAND AND PROPERTY IN THE ZONE

In addition to the grant of full sovereign rights, power and authority over the Canal Zone, the United States obtained title by purchase of all privately owned land and property in the territory from individual property owners, making the Canal Zone the most costly territorial acquisition in the history of the United States (Ho. Doc. No. 474, 89th Congress, p. 361.)

These purchases included all works of the French Panama Canal Company and all the stock of the Panama Railroad Company, the latter then a New York corporation.

EXCLUSIVE U.S. CONTROL OVER CANAL ZONE RECOGNIZED BY PANAMA, 1904

When was exclusive control by the United States over the Canal Zone recognized by Panama? This was done on May 25, 1904, in a note by Secretary of Government Tomás Arias, which stated: "The Government of the Republic of Panama considers that upon the exchange of ratification of the treaty for opening an interoceanic canal across the Isthmus of Panama its jurisdiction ceased over the Zone . . ." That exchange occurred on February 26, 1904, in Washington.

SECRETARY HAY CLARIFIES SOVEREIGNTY QUESTION, 1904

The ink was hardly dry on the 1903 Treaty when Minister of Foreign Affairs of Panama José D. de Obaldia, in a note to Secretary of State Hay on August 11, 1904, raised the sovereignty issue. (*Foreign Relations*, 1904, pp. 598–607.) In reply to the Panamanian Government's contention that the works "construction, maintenance, operation, sanitation, and protection" of the canal as used in the treaty constituted a "limitation on the grant," Secretary Hay, on October 24, 1904, wrote a comprehensive reply that is still classic. (Ibid., pp. 613–30.)

In this reply Secretary Hay explained that the words, "for the construction, maintenance, operation, sanitation, and protection of said canal" were not intended as a "limitation on grant" but were a "declaration of the inducement prompting the Republic of Panama to make the grant." (Ibid., p. 614.) He then asserted that the "great object sought to be accomplished by the treaty is to enable the United States to construct the canal by the expenditure of public funds of the United States—funds created by the collection of taxes . . ." (Ibid., p. 616.) Though Secretary Hay in this note did refer to Panama as the "titular sovereign of the Canal Zone," he declared that such sovereign is "mediatized by its own acts, solemnly and publicly proclaimed by treaty stipulations, induced by a desire to make possible the completion of a great work which will confer inestimate benefit on the people of the Isthmus and the nations of the world." He also stated that it was difficult to conceive of a country contemplating the abandonment of such a "high and honorable position, in order to engage in an endeavor to secure what at best is a 'barren scepter'." (Ibid. p. 615.)

In addition, the evidence is conclusive that under no circumstances would the United States have assumed the grave responsibility maintaining, operating, sanitating, and protecting the Panama Canal in an area notorious for tropical disease and endless turmoil under a weak and helpless emergent government except for the grant of full sovereignty over the Canal Zone and Canal.

SECRETARY OF WAR TAFT EXPRESSES HIS VIEWS ON CANAL SOVEREIGNTY, 1905–06

When discussing the question of United States power on the Isthmus on January 12, 1905, in a report to President Theodore Roosevelt, Secretary of War Taft made the following statement:

"The truth is that while we have all the attributes of sovereignty necessary in the construction, maintenance, and protection of the Canal, the very form in which these attributes are conferred in the treaty seems to preserve the titular sovereignty over the Canal Zone in the Republic of Panama, and as we have conceded to us complete judicial and police power and control over the Zone and the two ports at the end of the canal, I can see no reason for creating a resentment on the part of the people of the Isthmus by quarreling over that which is dear to them but which to us is of no real moment whatever." (Quoted in Hearings before Senate Committee on Interoceanic Canals, 1907, Vol. III, p. 2399.) This statement referred to Panamanian claims of being the token sovereign of the Canal Zone.

Again on April 18, 1906, when commenting on Article III of the 1903 Treaty in testimony before a Senate Committee, Secretary Taft stated:

"It is peculiar in not conferring sovereignty directly upon the United States, but in giving to the United States the power which it would have if it were sovereign. This gives rise to the obvious implication that a mere titular sovereignty is reserved in the Panamanian Government. Now, I agree that to the Anglo-Saxon mind a titular sovereignty is like . . . a barren ideality, but to the Spanish or Latin mind, poetic and sentimental, enjoying the intellectual refinements, and dwelling much on names and forms, it is by no means unimportant." (Hearings before Senate Committee on Interoceanic Canals, April 18, 1906, Vol. III, p. 2527.)

These were courteous efforts by Secretary Taft to sooth the sensibilities of our Panamanian friends but never with the thought or purpose of surrendering the actual, necessary and exclusive sovereign rights, power and authority of the United States over both the Canal and its indispensable protective frame of the Canal Zone. The term "titular sovereignty" means nothing more than a reversionary interest on the part of Panama in the sole event the United States should abandon the Panama Canal as in the case of the execution of a reversionary deed of property in Anglo-Saxon countries. Hence, there can never be any reversion of the Canal Zone to Panama unless our country abandons the canal enterprise, which includes the Zone.

Unfortunately, many writers have quoted Secretary Taft out of context and this practice has led to much public confusion as to precisely what he said and meant. Some of this confusion is not accidental especially on the part of certain officials of our government who through motives of appeasement have pursued a weak and unrealistic course.

PRESIDENT-ELECT TAFT EMPHASIZES NECESSITY FOR FULL U.S. CANAL CONTROL, 1909

After Secretary Taft's election as President, Panama Canal construction was well underway. In an address on the work at New Orleans on February 9, 1909, the President-elect made the following remarks:

"Because under the treaty with Panama we are entitled to exercise all the sovereignty [in the Canal Zone] and all the rights of sovereignty that we would exercise if we were sovereign, and Panama is excluded from exercising any rights to the contrary of those conceded to us . . . that is a ticklish argument, but I do not care whether it is or not. We are there. We have the right to govern that strip, and we are going to govern it. And without the right to govern the strip, and without the power to make the laws in that strip bend, all of them, to the construction of the Canal, we would not have been within 2 or 3 or 4 years, hardly, of where we are in the construction." (Ho. Doc. No. 474, 89th Congress, p. 52.)

Those unqualified words of President-elect Taft are even more applicable today than in 1909, for the Panama Canal has become one of the greatest maritime crossroads in the world with an estimated transit total in 1971 of 15,550 vessels, which is an average of 42.6 per day. (Hearings before Sub Committee of Committee on Appropriations for 1972, Pt. 2. p. 312.)

PRESIDENT TAFT OUTLINES U.S. POLICY ON CANAL ZONE SOVEREIGNTY AND JURISDICTION, 1910

Again as President of the United States on November 16, 1910, while attending a banquet given by the President of Panama, Mr. Taft made this significant statement:

"We are here to construct, maintain, operate, and defend a world Canal, which runs through the heart of your country, and you have given us the necessary sovereignty and jurisdiction over the part of your country occupied by that canal to enable us to do this effectively." (*Canal Record*, Vol. IV, (Nov. 23, 1910), p. 100.)

This was not an excercise in banquet comradery but an unchallenged statement of policy as to the Panama Canal enterprise by the President of the United States, which policy is now being bitterly assailed by an unconstitutional government in Panama founded by force and violence and which might be superseded at any time by a Constitutional government that would reverse the policy of the revolutionary regime.

Again on December 5, 1912, pursuant to the Panama Canal Act of 1912 and in conformity with treaty provisions, President Taft in an Executive order declared that—

"All land and land under water within the limits of the Canal Zone are necessary for the construction, maintenance, operation, protection and sanitation of the Panama Canal." (Encyclopaedia Britannica, 1971, Vol. 17, p. 206.)

There are greater needs for this area now than there were at that time. In fact the Canal Zone Territory should be extended by the purchase of the entire watershed of the Chagres River that provides the summit level water supply as was once recommended by General Clarence Edwards when he was in command of U.S. Forces on the Isthmus.

SECRETARY OF STATE HUGHES DEFENDS U.S. SOVEREIGNTY OVER CANAL ZONE, 1923

In early 1923 the Panama Government attempted to reopen negotiations for a new canal treaty (*Foreign Relations of the United States*, 1923, Vol. II, pp. 638–48). Secretary of State Hughes studied the history of our relations with Panama, called in the Panamanian Minister and, with a refreshing degree of candor, stated that the U.S. Government "could not and would not enter into any discussion affecting its full right to deal with the Canal Zone under Article III of the Treaty of 1903 as if it were the sovereign of the Canal Zone and to the entire exclusion of any sovereign rights or authority on the part of Panama." To this he added that, "it was an absolute futility for the Panamanian Government to expect any American Administration, no matter what it was, any President or any Secretary of State, ever to surrender any part of these rights which the United States had acquired under the Treaty of 1903." (*Ibid.* p. 684.) That forthrightness on the part of Secretary Hughes met with the situation for many years. The present Secretary of State should speak out with like candor in defense of our just and indispensable authority over the Canal Zone. The argument made that the United States does not need all the Canal Zone territory to protect the Canal is unrealistic because any part of it might be needed in time of war to create defenses and to deploy the protective forces for the Canal and Panama itself.

During the construction of the Canal the State Department did not control policy as regards the Canal Zone, and construction went forward effectively and expeditiously. After the completion of the Canal the State Department got its nose into the tent and finally its body. Ever since it has muddled our Isthmian policy by weakness, timidity and vacillation, rendering some of the consequent problems almost beyond solution.

HULL-ALFARO TREATY OF 1936–1939 STARTED OUR GREAT GIVE-AWAY PROGRAM

Because of the economic support of the Panama Canal, the full effects of the Great Depression of 1929 were not felt in Panama until 1932 when they stimulated agitations for a new treaty. With the change of administrations in the United States in 1933 our government weakened as to the earlier official positions taken by President Theodore Roosevelt, Secretaries Hay and Hughes, and negotiated the Hull-Alfaro Treaty of 1936 with Panama.

Because of a strong opposition in the Senate it was not ratified until 1939 just before the start of World War II. In this treaty, the United States made important concessions to Panama, which included the construction of a Trans-Isthmian highway in Panama extending through the Canal Zone to Colón, giving Panama jurisdiction over that highway in the Zone, renunciation of the right of eminent domain in the Republic of Panama for Canal purposes, and surrender of U.S. authority to maintain public order in the cities of Panama and Colón and adjacent areas. In a realistic sense this treaty was the start of our great giveaway programs, causing serious difficulties in obtaining military bases in Panama for defending the Panama Canal in World War II and creating dangerous precedents. A positive result of the treaty, however, was that Panama recognized that the word "maintenance" in Article I of the treaty allowed "expansion and new construction" when undertaken in accordance with the treaty, that is, for the maintenance, operation, sanitation and protection of the existing Canal.

It was under this authority that the Congress enacted legislation for the Third Locks Project soon afterward and on which more than $76,000,000 was expended before it was suspended in May 1942 because of more urgent war requirements. The useful work accomplished on this project included huge lock site excavations at Gatun and Miraflores for the proposed larger locks, which could be used for the modernization of the existing canal; and for which a new treaty would be unnecessary.

CHAPIN-FÁBREGA TREATY FURTHER WEAKENS JUDICIAL STRUCTURE, 1955

By 1953 agitations were well underway in Panama for the Chapin-Fábrega Treaty, which without adequate understanding or debate, was ratified in 1955. This treaty gave further concessions to Panama, including provisions for the construction by the United States of a free bridge across the Canal at Balboa to supersede the Thatcher Ferry, relinquishment of the right to enforce health and sanitation ordinances in the cities of Panama and Colón, and the cession to

Panama without any compensation whatever of the terminal yards and passenger stations of the Panama Railroad. The last was a clear violation of the Thomson-Urrutia Treaty of 1914–22 with Colombia, which gives that country important rights in the use of both the Panama Canal and the Railroad.

The 1955 Treaty completed the withdrawal of the United States from Panama to the boundaries of the Canal Zone but did not alter the basic sovereignty and perpetuity provisions of the 1903 Treaty as regards United States exclusive sovereign control in perpetuity of the Canal enterprise, which includes the Zone.

SECRETARY OF STATE JOHN FOSTER DULLES DEFENDS U.S. POSITION AT PANAMA, 1956

Following the nationalization by Egypt in 1956 of the Suez Canal, Secretary of State John Foster Dulles, whose connections with the Panama Canal dated back to World War I, issued an order that no officer of the U.S. Foreign Service, in conversation, speaking or writing, was to equate the status of the Panama Canal with that of the Suez Canal, and that violators would be disciplined (*Congressional Record*, Vol. III, Pt. 19 (Oct. 5, 1965), p. 25974). That order was the last strong statement by a Secretary of State as regards U.S. sovereignty, over the Canal Zone. Secretary Dulles' successors, less conscious of the realities involved, gradually weakened and the aggressiveness of Panamanian radicals correspondingly increased. No high official of our government spoke out as they should have done. Thus matters took their retrogressive course.

U.S. FORMAL RECOGNITION OF PANAMA TITULAR SOVEREIGNTY LEADS TO HEAVIER DEMANDS, 1958

On May 2, 1958, there was an organized mob invasion into the Canal Zone called Operation Sovereignty. Red led Panamanian University students planted 72 Panama flags at various spots in the Zone, including some squarely in front of the Canal Administration Building. Instead of acting promptly to arrest and punish the trespassers, our responsible authorities naively ignored the incidents as youthful pranks. Instead of pranks they were probes of our government's will power to stand up for the just and indispensable rights of the United States at Panama.

Soon afterward, during a July 12–16 visitation in the Canal Zone by Dr. Milton Eisenhower, President Ernesto de la Guardia, Jr., told him that flying the Panama flag in the Zone would promote cooperation. That was a very suave statement.

Following the riots of November 3, 1959, which required the use of the U.S. Army to protect the Canal Zone from mob invasion, Under Secretary of State Livingston T. Merchant visited the Isthmus and, under instructions, publicly announced that the United States recognized Panama's titular sovereignty over the Canal Zone but, quite significantly, did not define that term.

As predicted by me in the Congress at the time that disingenuous action did not beguile Panamanian radicals but simply whetted their appetites for more concessions.

U.S. CONGRESS OPPOSES SURRENDERS AT PANAMA, 1960

Reactions in the Congress were quickly forthcoming. On February 2, 1960, the House of Representatives, by the overwhelming vote of 382 to 12, opposed the formal display of the Panama flag in the Canal Zone in a House Concurrent Resolution but, unfortunately, the Senate Committee on Foreign Relations did not act. As a follow up to the resolution, the House, on February 9, unanimously adopted the Gross Amendment to the 1961 Department of Commerce Appropriations Bill prohibiting the use of any funds under that appropriation for the formal display of the flag of Panama in the Zone. The Senate accepted this amendment and it became law.

As early as April 30, 1960, I predicted in an address in the House that soon after the Congress adjourned there would be an order from the President based upon the recommendation of the State Department, authorizing the display of the Panama flag in the Zone.

Later, on June 23, 1960, I addressed the House, stressing the problems that would follow as the result of the hoisting of the Panama flag in the Zone territory and warning the Congress that elements in the State Department were planning to authorize it. Next, on June 30, I wrote Secretary of State Christian A. Herter appraising him of these facts, urging him to clean out the responsible ele-

ments in his department, and warning him that should the Panama flag be displayed in the Canal Zone under his authorization members of the House would press for his impeachment. His reply was evasive. (*Congressional Record* (86th Cong., 2d Sess.), Vol. 106, Pt. 14 (Aug. 31, 1960), p. 18872.)

PRESIDENT EISENHOWER STRIKES U.S. FLAG IN CANAL ZONE, 17 SEPTEMBER 1960

Just as predicted, on September 17, 1960, soon after adjournment of the Congress, President Eisenhower, without Congressional sanction and using emergency funds from the Department of State, in a mistaken gesture of friendship, naively authorized the formal display of the Panama flag in one place in the Canal Zone at Shaler's Triangle as "visual evidence" of Panama's titular sovereignty over the Zone but did not define the term, which, as already pointed out, is of purely reversionary character. Also as predicted, Panamanians took this display not as evidence of titular sovereignty, but as an official admission by the United States of its recognition of Panama's full sovereignty over the Zone Territory. (G. Bernard Noble, *Christian A. Herter*, New York: Cooper Square Publishers, Inc., 1970, p. 209.)

To avoid confusion the word sovereignty means the state of quality of having supreme power of dominion. Could there be any better status for the Panama Canal and Canal Zone than that under the full sovereign control of the United States with the avoidance of all problems of extra territoriality? For such sovereignty there can be only one flag and that is the flag of the United States.

PANAMANIAN MOBS ASSAULT CANAL ZONE, JANUARY, 1964

Did the 1960 display by President Eisenhower appease Panamanian radicals? It did not but simply served to open a Pandora Box of more unrealistic and impossible demands. The Panama flag display was extended by President Eisenhower's successors, Presidents Kennedy and Johnson. They culminated in a massive Red led mob invasion of the Canal Zone during January 9–12, 1964, again requiring the use of our armed forces to protect the lives of our citizens and the Canal itself. In retaliation, Panama broke diplomatic relations with the United States and brought charges against the United States of "aggression" against Panama.

Here I would like to stress that not one United States soldier left the Canal Zone but simply defended the lives of our citizens and the Canal with the result that there was no interruption of transit despite the magnitude of the disorders. This was the highest tribute to the wisdom of our policy of having United States citizens in security positions, and having a protective strip framing the Canal.

PRESIDENT JOHNSON ACCEDES TO RADICAL PANAMANIAN DEMANDS, 1964

After President Johnson had an opportunity to get the necessary facts about the Panamanian mob attack, on January 14, 1964, he took a strong initial stand for exercising United States sovereignty over the Canal Zone stating that our country had a "recognized treaty obligation to operate the Canal efficiently and securely, and (that) we intend to honor that obligation in the interest of all who depend upon it." (*Congressional Record* (88th Cong., 2d Sess.), Vol. 110, Pt. 1 (Jan. 14, 1964), p. 426.) For this candor he was widely commended at home and abroad despite the position taken by the United States in 1956 in opposition to the British-French reoccupation of the Suez Canal.

Unfortunately, after this intial policy statement he apparently fell into the clutches of Department of State miners and sappers and reversed his original position. Consequently, on December 18, 1964, after restoration of normal relations with Panama, President Johnson announced that the U.S. Government had completed an intensive policy review with respect to the present and future of the Panama Canal and that he had reached two decisions:

First, to press forward with Panama and other interested governments for a sea level canal; and second, to negotiate an entirely new canal treaty for the existing Panama Canal.

Legislation to authorize an investigation of the feasibility of a canal of sea level design was obtained—Public Law 88–609, approved September 22, 1964. Robert B. Anderson was assigned to head that study. Later, Mr. Anderson was appointed as chief U.S. Negotiator for the proposed treaty negotiations, thus holding two positions at the same time.

NEW CANAL TREATIES PROPOSED, 1967

On June 26, 1967, President Johnson and President Marco A. Robles of Panama jointly announced that agreement had been reached on three proposed new canal treaties as follows:

The first covering the operation of the present canal would have (1) abrogated the Treaty of 1903, (2) recognized Panamanian sovereignty over the Canal Zone, (3) made Panama an active partner in the management and defense of the Canal, (4) increased toll royalties to Panama, and (5) eventually given to Panama exclusive possession in 1999 if no new canal were constructed at U.S. expense or soon after opening of a sea level canal but not later than 2009 if a new canal were built.

The second treaty for a canal of sea level design would have given the United States an option for 20 years after ratification to start construction, 15 more years for construction and a majority membership in the canal authority for 60 years after opening or until 2067, whichever was earlier. Additional agreements to fix the specific conditions for its combinations would have to be negotiated when the United States should decide to execute its option.

The third treaty for defense would have provisions for the continued use of military bases by U.S. Forces in Panama for 5 years beyond the termination date of the proposed treaty for the operation of the existing canal. If a new canal in Panama were constructed the military base rights treaty would have to be extended for the duration of the treaty for the new canal. (Background of U.S. Decision to Resume Panama Canal Treaty Negotiations," Office of Interoceanic Canal Negotiations, State Department, 1971.)

PROPOSED 1967 TREATIES OPPOSED IN BOTH PANAMA AND THE UNITED STATES

Although President Johnson did make a press release outlining the general aims of the treaties, the governments of both the United States and Panama withheld publication of the proposed treaties apparently with the hope that they would be ratified by our Senate without adequate debate.

Ferreted out through the journalistic initiative of the *Chicago Tribune* and published in that paper, and later quoted in addresses to the U.S. Senate by Senator Strom Thurmond of South Carolina in the *Congressional Records* of July 17, 21 and 27, 1967, they aroused a storm of protests in both Panama and the United States as well as in Great Britain and Japan, which are large users of the Panama Canal. So strong were these protests that the proposed 1967 treaties were never signed.

SEA LEVEL RECOMMENDATION HINGES ON SURRENDER OF CANAL ZONE, 1970

On December 1, 1970, the Anderson panel submitted its volumnious report recommending the construction of a new canal of so-called sea level design entirely in Panamanian territory about 10 miles west of the existing canal at an initially estimated cost of $2,888,000,000 to be borne by United States taxpayers. This figure did not include the cost of the rights of way or of the inevitable indemnity to Panama.

Meanwhile, in line with Isthmian revolutionary history, the Constitutional government of Panama was overthrown on October 11, 1968, after only 10 days in office, by a military coup and a provisional Revolutionary Government established. This eliminated the Panama National Assembly and converted its spacious building into government offices. Eventually, the revolutionary government, after declaring the discredited 1967 treaties unacceptable, sought to negotiate new ones and our government acceded, with the designation of the same Robert B. Anderson as Chief U.S. Negotiator.

Here it should be explained that the construction of a canal of sea level design at Panama for many years has been an undisclosed objective of a small professional engineering-industrial group, including manufacturers of heavy earth moving machinery. The recommendation of the 1970 Anderson Report for a sea level canal hinges upon the surrender of U.S. sovereignty over the Canal Zone. Moreover, the holding of the position of Chief Negotiator by the same person who headed the negotiations for the discredited 1967 treaties and the sea level study creates a serious conflict of interest to which the Congress should be fully alert.

One of the great purposes of United States policy of exclusive sovereign control over the Canal Zone was the avoidance of the never ending conflicts and recriminations that always accompany extra-territorial rights. To speak so bluntly as the gravity of the situation at Panama demands, the State Department in recent years has been dominated by those who timidly accept as valid every major claim of Panamanian radicals for the surrender by the United States of its sovereignty over the canal enterprise and its transfer to Panama. Such action would undoubtedly result in the immediate dominance of the Isthmus including the Canal Zone by Soviet powers against which Panama could not cope.

LONG RANGE PANAMANIAN AIMS

Lest there be some doubt as to the long range aims of the Panama Government as to its objectives, on April 29, 1958, Ambassador Ricardo M. Arias of Panama, in a major address at the School of Foreign Service of Georgetown University, made this significant revelation: "The foreign policy of my country during the past 50 years has been to exert every effort in order to obtain at least for Panama, conditions similar to those granted to Colombia in January 1903." (Ho. Doc. 474, 89th Congress, p. 23.)

The blackmailing and demogogic revolutionary government of Panama would have the world forget the history of that country: the Panama Revolution under the guaranty of the United States, the reasons for the 1903 Treaty under which the United States constructed and has subsequently operated and defended the Panama Canal, the transformation of Panama from a cesspool of disease and penury into a relatively healthy land of comparative prosperity, and the vast sums provided by our government for canal purposes. The net total of these sums including defense, as of June 30, 1968, was more than $5,000,000,000, all provided by the taxpayers of the United States.

All the facts just enumerated, Mr. Chairman, the present government of Panama would remove from the memory of mankind. The United States can well stand on the record that it has made at Panama in dealing with all of these matters and trust to history for vindication.

Manifestly, Panama cannot eat its cake and have it also. After the United States built the canal and successfully operated it for more than half a century, a fly by night and sanguinary revolutionary government would have our country neglect its duty to its taxpayers and surrender the indispensably necessary protective frame of the Canal to Panama and thus enable that country to expropriate the canal itself and drive us from the Isthmus. The present Revolutionary Government of Panama has been motivated by a complete disregard of historical verities and its policy of truculence and impossible claims has undoubtedly been induced by Soviet assurances, for Soviet experts are already in Panama. This always happens prior to the establishment of diplomatic relations.

WHY NOT SURRENDER TO COLOMBIA RATHER THAN PANAMA?

In response to the officialdom in our government who seem determined to destroy the 1903 Treaty and surrender our just rights, power and authority at Panama, why should not such surrender be made to Colombia, which until November 3, 1903, was the sovereign of the Isthmus instead of Panama?

Any surrender of the Canal Zone and Canal is unthinkable; but if any surrender should be made it should be to Colombia, of which Panama was once a province, and not to Panama.

SEA LEVEL CANAL—A POLITICAL MOVE

In the light of what has taken place it is interesting to note that Colonel John P. Sheffey, former Executive Director of the recent sea level studies and now of the Office of Interoceanic Canal Negotiations in the Department of State, made the following revealing statements before a gathering of marine scientists on March 4, 1971, at the Smithsonian Institution:

1. That the canal investigation under Public Law 88–609 calling for consideration of the long range Canal program originated with the State Department following the 1964 riots as a means for improving treaty relationships with Panama.

2. That President Nixon had accepted the final 1964 Johnson canal treaty policy.

3. That the main purpose of the sea level proposal was to obtain "better treaty relationships" with Panama.

4. That if such relationships are not obtained the project is not warranted.
5. That the sea level proposal is not justified economically and that it "may never be constructed."
6. That because of opposition in both the United States and Panama the 1967 draft treaties would not be the basis for future negotiations.
7. That the sea level proposal was recognized as "ecologically dangerous."
8. That a decision to construct one would be a "political" decision.

Could there be more shocking admissions concerning a subject of such vast importance to the entire world than those just enumerated? (*Congressional Record*, March 24, 1971, p. 53879.)

PRESIDENT NIXON ADOPTS THE FINAL JOHNSON POLICY

The latest information on the canal treaty situation is that President Nixon, on the advice of the same appeasement officials in the State Department who advised President Johnson and whom President Nixon in his 1968 campaign had avowed to replace, has established objectives similar to those of his predecessor as modified by events since 1967. This information is that the "renewal of violence in Panama, possibly more extensive than experienced in 1964, might be unavoidable if the treaty objectives considered by the Panamanian people to be reasonable and just are not substantially achieved." This is complete blackmail on the part of the Panama Government, which today is unconstitutional under Panamanian requirements.

Though averring that the United States has "no intention of yielding control and defense of the Canal to the threat of violence," the State Department view is that it is in United States interest to demonstrate again as in 1967 our "willingness to make adjustments" which do not significantly weaken our rights to control and defend the canal and that it would be difficult for the United States to "justify itself in world forums" in the event it is again forced to "commit" its armed forces against "Panamanian incursion into the Canal Zone." (Background . . ., 1971, op. c.t.) Could there be any more obvious double talk? The United States did not commit its Armed Forces against anybody.

Such statements of policy, Mr. Chairman are an expression of willingness to surrender in advance. What could be more pusillanimous or unrealistic than this State Department pronouncement! No wonder the eyes of the world are watching us at Panama, for upon what we do there could well depend the freedom or the slavery of the world. Shabby sentimentality has no place in the consideration of the problems of the Canal Zone and Panama Canal. Such policy pronouncements as those just cited are about as senseless as those that involved the United States in entering the Korean and Viet Nam war.

Instead of surrendering the Canal Zone to Panama it ought to be extended so as to include the entire drainage area of the Chagres River basin as was first recommended by General Clarence R. Edwards, the Commanding General of U.S. troops on the Isthmus, as the result of World War I experience.

PANAMA NEGOTIATORS DEMAND FULL SOVEREIONTY OVER CANAL ZONE

In public statement by the Panamanian negotiators just prior to their departure for the United States on June 29, 1971, they said that they would demand full sovereignty over the Canal Zone or that there would be no treaty and that in event of failure to get such sovereignty they would return to Panama and explain matters to their people. In view of the anti-United States frenzy into which the people of that country have been whipped, this constitutes an open threat of violence comparable to that of January 9-12, 1964, which required the use of our Armed Forces to protect the lives of our citizens and the canal itself. Certainly there are few better examples of how appeasement begets blackmail than in the conduct during recent years of our policies at Panama. It must be borne in mind that those who made these threats overthrew by force and violence the Constitutional Government of Panama and are maintaining themselves in power by the same means. Why make treaties with the present Revolutionary Government which would in all likelihood be repudiated when Panama returns to a Constitutional government just as the present government repudiated the proposed 1967 treaties.

The greater part of the turmoil and bitterness that has evolved in Panama has been because Panamanian radicals and demagogs have failed to diagnose realistically the premises on which they base their policies and actions. Unfor-

tunately, through continued insistence Panamanian policies now prevailing are not realistic.

Timidity and vacillation on the part of our State Department have served to induce extravagant claims and demands by Panama that have resulted in brain washing our accredited officials who have never emphasized the genesis of Panama and the Canal.

Panama is not a great power and can never be one. It is a small and weak country—the result of a Caesarian operation that was successful because the United States as a great power supported it. While Panama's frequently mentioned geographic position is an asset it is also a great liability because predatory powers covet it. The actual confrontation now occurring is not between the United States and Panama but between the United States and the U.S.S.R. The Soviet takeover of Cuba had, and still has, for its purpose the control of the Panama Canal.

Moreover, Panama at present does not have any Constitutional way to ratify treaties because the Revolutionary Government has abolished the National Assembly of Panama, which is the treaty ratifying agency of the Panamanian Government.

U.S. CONSTITUTION PROTECTS CANAL ZONE

Here I would emphasize the importance of Article IV, Section 3, Clause 2 of the U.S. Constitution, that vests the power to dispose of territory and other property of the United States in the Congress, which of course, includes the House of Representatives. This places a high degree of responsibility on the subcommittee, for as in the case of the 1967 proposed treaties and, so far as can be ascertained, at the present time, this wise Constitutional provision is being ignored by our treaty negotiators.

An examination of court decisions will disclose that the Constitutionality of this provision has been upheld many times. One example of our government complying with it was in the 1955 Treaty in which the conveyance of lands and property of the United States to Panama was "subject to the enactment of legislation by the Congress." (Chapin-Fábrega Treaty of January 25, 1955, Article V.)

PANAMA CANAL IS PART OF THE U.S. COAST LINE

As foreseen by the formulators of our major Isthmian Canal policies of site, type and control, the Panama Canal is a part of the coast line of the United States. Its protection is just as vital to national defense as the protection of Delaware Bay or San Francisco Harbor.

General plans for the major increase of capacity and operational improvements of the existing canal have been developed and are covered in pending legislation but cannot proceed until the sovereignty issue is clarified and our undiluted control and owenrship of the canal and the Canal Zone fully understood and recognized, for the Canal can no more be separated from the Zone than boilers from a steam power plant.

The very moment that we surrender sovereignty over the Zone to Panama as presently planned, Soviet power will take over the Republic of Panama as it did Cuba. In fact, as previously stated, Soviet experts have already arrived in Panama and are advising the University, social security organizations, and labor offices of the Panamanian Government.

Thus, also as previously indicated, the issue is not United States control of the Canal Zone versus Panamanian but continued U.S. sovereignty versus U.S.S.R. domination.

DANGERS OF SURRENDERS

Before any surrender to Panama of sovereignty over the Canal Zone there are many questions that must be answered satisfactorily, among them the following:

Where would Panamanian political leaders flee for asylum to escape assassination such as has frequently occurred for many years?

How could the lives of our citizens and the Canal itself be defended against mob violence without the protective frame of the Canal Zone under the control of the United States?

How could the Canal be efficiently maintained and operated unless the undiluted control of the Zone with all its tremendous facilities remains with the United States?

How could the constant conflicts and recriminations that always feature extraterritoriality be avoided in the event of surrender of Canal Zone sovereignty?

How could the Panama Canal be modernized without further extortions through further treaty negotiations?

Why jeopardize our present treaty rights to modernize the existing canal by "expansion and new construction" abrogating the workable 1903 Treaty?

Why should the United States abandon policies successfully tested in the operation of the existing canal based on provisions of a workable Treaty for a mere option for a new canal sea level design that even its advocates admit may never be constructed?

Why does the State Department ignore the marine ecological angle involved in constructing a salt water channel between the oceans, which recognized scientists predict would result in infesting the Atlantic with the poisonous Pacific sea snake and the predatory Crown of Thorns starfish that would have international repercussions?

Is not the Republic of Panama a small and weak country whose independence is assured only so long as the United States remains on the Isthmus?

Is not all the talk by the Revolutionary Government of Panama about the dignity of the fatherland false and demagogic?

Why has it whipped the people of Panama into a frenzy of great expectations which when not realized may result in violence?

What would be the legal complications of ending more than six decades of United States jurisdiction and the Canal Zone Code that has been enacted by the Congress?

Would not such surrender be in violation of the 1950 Panama Canal Reorganization Act (Pub. Law 841, 81st Congress) that placed the canal on a self-sustaining basis?

Would not the surrender of the Canal Zone arouse controversy with Great Britain as violative of the 1901 Hay-Pauncefote Treaty and other large maritime nations that have accepted that treaty?

Would not surrender of the Canal Zone to Panama violate the right of Colombia under the Thomson-Urrutia Treaty of 1914–22 in the Panama Canal and Railroad?

In view of terms of the 1903 Treaty ceding sovereignty over the Canal Zone to the United States how can it be legally surrendered except by the abandonment of the Panama Canal?

Would not such surrender revive the claim of Colombia not only to the Canal Zone and Canal but also to the entire Isthmus?

Should such surrender be made why not make it to Colombia rather than Panama?

What reason except a determination to acquire the Panama Canal has motivated the U.S.S.R. in the takeover of Cuba, the building of bases there, and operating submarines off both coasts of Latin America?

Instead of surrendering the Canal Zone to Panama why not extend it to include the entire watershed of the Chagres River?

Would not the cession of U.S. sovereignty over the Canal Zone to Panama facilitate the expropriation of the Canal as occurred in Egypt after the surrender of the Suez Canal Zone?

Would not such expropriation be supported by the full might of Soviet power?

Then who would operate and control this great artery of marine transportation and world strategy?

Can you think of a worse blow against the United States short of nuclear attack than the loss of the Panama Canal?

Would not cession of the Canal Zone constitute a precedent for other nations, emboldened by such surrender to Panama, to challenge our right to Alaska, the Gadsden Purchase, the vast Southwest, Florida and the Louisiana Purchase?

The historic canal policy of the United States is for an American canal, on American soil, for the American people and world shipping as provided by law; and that is the policy that should be followed without any dilution.

PRESENT TASKS BEFORE THE CONGRESS

The present task before the House of Representatives is the transcendent one of clarification and reaffirmation of our sovereign control of the Panama Canal enterprise. The resolutions now pending reflect the views of our best informed Congressional leaders and specially qualified citizens from various parts of the nation. Their adoption will serve notice in the world, especially Soviet rulers,

that the United States has the will to meet its treaty obligations at Panama and that it will continue to do so and thus serve to regain the public image that our great country has lost through weak and timid policies in recent years, particularly in Latin America. It will open the way for the next great step by the Congress in the evolution of our Isthmian Canal policy—the major modernization of the existing Panama Canal. These two steps together, sovereignty reaffirmation and modernization, should meet the canal situation for many years into the future.

Accordingly, I urge prompt favorable action on the Panama Canal sovereignty resolutions now pending.

[From the Congressional Record, Sept. 9, 1976]

New Panama Canal Treaty Reports Fallacies Clarified and Constructive Program Proposed

The SPEAKER pro tempore (Mr. McFall). Under a previous order of the House, the gentleman from Pennsylvania (Mr. Flood), is recognized for 60 minutes.

Mr. Flood. Mr. Speaker, as one who for many years has studied interoceanic canal history and problems, I long ago became accustomed to surprises. The latest significant one was a February 24, 1976, committee print of a report concerning a recent visit to the Isthmus of Panama by a Special Subcommittee on Investigations, House Committee on International Relations, under the title of "A New Panama Canal Treaty: A Latin American Imperative."

In the foreword to this document, the distinguished chairman of the full committee, the gentleman from Pennsylvania (Mr. Morgan), correctly commented that the observations and findings in the report are those of the study mission and do not necessarily reflect the views of the membership of the full committee. To this statement, I would make these additional observations: nor do they reflect the views of many well informed Members of the Congress in both the Senate and House, various distinguished historians of the United States, some of our leading military and naval strategists, many experienced officers of the Armed Forces with previous service in the Canal Zone or other areas of the Caribbean, and experienced officials of large shipping interests that use the canal.

In addition, I can mention such national patriotic organizations the American Legion, the Veterans of Foreign Wars, the Daughters of the American Revolution and the U.S. Industrial Council. All of these and many other groups as well as thousands of individuals from all the States, conscious of the mounting perils in the Gulf-Caribbean danger zone, strenuously oppose any weakening of U.S. sovereign rights, power, and authority over either the Canal Zone or the Panama Canal.

Mr. Speaker, much of what I shall say today, I have been saying for many years. It is aimed at clearing away some of the bewildering confusion that has featured so many recent discussions of the immensely complicated canal question and providing a valid plan of action.

How has the growing opposition to the long planned relinquishment of the Canal Zone been reflected in the Congress? In the Senate, some 39 Members cosponsored Senate Resolution 97 expressing the sense of that body against any surrender at Panama. This number of Senators is more than enough to defeat the projected give-away treaty. (Congressional Record, March 4, 1975, pp. S3013–S3023).

In the House, this branch of the Congress, on June 26, 1975, when considering an amendment to the Department of State appropriations bill for fiscal year 1976, introduced by Representative M. Gene Snyder, voted 246 to 164 to prohibit the use of appropriated funds for negotiating the surrender or relinquishment of any U.S. rights in the Canal Zone. (Congressional Record, June 26, 1975, pp. H6226, H6247).

Again, on June 18, 1976, the House of Representatives, after extensive debate, adopted by a vote of 229 to 130 the following amendment to the State Department Authorization Act, fiscal year 1977:

"Sec. 14. Any new Panama Canal treaty or agreement negotiated with funds appropriated under this Act must protect the vital interests of the United States in the Canal Zone and in the operation, maintenance, property, and defense of the Panama Canal." (Congressional Record, June 18, 1976, p. H6179)."

This amendment, though "watered down" from that introduced by Representative Snyder on this occasion, was not in the form of a "sense of the Congress" resolution as finally adopted in 1975, which was ignored by the State Department, but in the words of its sponsor a "substantive change in the law" (Ibid. p. H6184). Nevertheless, it is still subject to interpretation by the State Department of the terms "vital interests," which that agency has equated with surrender of U.S. sovereignty over the Canal Zone. Thus, it is still likely to be ignored and ineffective.

Mr. Speaker, the most significant contribution of the June 18 canal debate was not the action by the House but the perceptive statements by Representatives Snyder, John M. Murphy, and others, which are commended for special attention. (Congressional Record, June 18, 1976, p. H6173 and p. H6177, respectively.) Re-

gardless of the action taken, it was clear from the speeches during the debate that this body of the Congress is overwhelmingly opposed to giving away the Canal Zone and canal.

As to the feeling among the people of our country at large, on March 15, 1973, following a national TV program on the sovereignty question, of more than 12,000 viewers from all over the Nation who expressed themselves, some 86 percent were opposed to any surrender. On August 23, 1976, of a total of 8,567 communications in the form of letters and petitions that I have received since February 7, 1974, only 16 were unfavorable. This figures out to a ratio of 535 to 1 in support of retention of undiluted U.S. sovereign control over the Canal Zone. Recent polls have confirmed this strong stand by the people of the United States against surrender.

An examination of the special subcommittee's activities during its isthmian visit, November 21–23, 1975, discloses meetings with officials of the U.S. Embassy in Panama and the pro-Red revolutionary government of Panama, conferences with many Panamanians, Canal Zone Government, and U.S. Southern Command officials, North American businessmen in Panama, and the Archbishop of Panama.

In this connection, it should be known that certain U.S. church groups have been misled into supporting the movement for the United States to give up the Canal Zone and that their efforts have included extensive lobbying in the Congress (Miami Herald, Sept. 21, 1975, p. 12F.)

Fortunately, Panama Canal employees, who have been in close touch with the situation, and understand it, have provided Members of the Congress with significant information, which helped to bring about on April 6–8, 1976 some important hearings by the Committee on Merchant Marine and Fisheries. (Congressional Record, April 13, 1976, p. H3341). This patriotic service by Panama Canal employees was a contribution of major value and merits the thanks of the Congress. I hope that all Members interested in the canal question will read the relevant parts of the testimony. (Congressional Record, April 13, 1976, p. H3341.)

Mr. Speaker, let us examine the six conclusions of the committee print report. Direct quotations of each of them are italicized:

"1. *If a new treaty is not negotiated, American interests in the Canal will be jeopardized.*"

The report goes on to state that if there is no new treaty, the United States will run "grave risks," including damage to the canal or even its closure, and harm to broad American political economic interests.

Mr. Speaker, as to such threats of violence, the canal, like any other major transportation project, has always been vulnerable. It was safely protected during two world wars, the Korean and Vietnam wars, the Cuban missile crisis and the 1964 Red-led attempted Panamanian mob invasion of the Canal Zone. I believe that I reflect the views of well-informed Members of the Congress, as well as many experienced officers of the Armed Forces, when saying that they are not impressed by such attempts at intimidation. Responsible officials of the executive, in the interest of saving lives of both North Americans and Panamanians, should make clear to the de facto revolutionary Panama Government that the United States will meet its treaty obligations for the protection of the Panama Canal and that any attack on either the Canal Zone or canal will be swiftly repelled with whatever force that may be required.

During the 1964 mob assault on the Canal Zone, transit traffic in the canal continued without interruption. That was a glowing tribute to the loyal employees, Panamanian as well as United States, who maintained and operated the canal, also to the Canal Zone Police and Armed Forces that protected it.

To stress the importance of our treaty obligations for protecting the canal against "lawlessness and disorder" as well as foreign aggression, information has been received from isthmian sources that there are nearly 3,000 Cubans in the Republic of Panama camouflaged as civilians and that Soviet-made machineguns in large trunks have been received on the isthmus. (Congressional Record, Mar. 16, 1976, p. H1987.) The chairman of the Committee on Armed Services has advised me that his committee is keeping in touch with the situation.

"2. *A new treaty is required if the United States is to have good relations with Latin American countries.*"

The report then comments that North Americans make a "grave mistake" if they see the canal as only a problem between the United States and Panama.

Mr. Speaker, as to this second conclusion, it should be stressed that over a period of years, the Panama Government, acting closely with Cuba and the

U.S.S.R., has been conducting a worldwide campaign of vilification against the United States to support the surrender of the Canal Zone to the Soviet puppet government of Panama. This campaign has included speaking tours by Panamanian agents before opinion-forming groups in the United States that were financed by the Department of State, and organized efforts to win support from various hemispheric countries.

In regard to the attitude of Latin America, other Members of the Congress and I were participants in the Inter-American Conference on Freedom and Security, September 25–28, 1975, Washington, D.C., which was attended by many distinguished representatives from 13 Western Hemispheric nations. The overwhelming views expressed during the sessions of the Conference were in opposition to surrender of the Canal Zone to Panama and a general desire for the United States to continue its undiluted sovereign control (Congressional Record, September 29, 1975, pp. H9263–H9266.)

The assertion in the committee print that Latin America is "unanimous" in its support of Panamanian demands is not well founded and should not be recognized. (L. Francis Bouchey, "Report of Official Proceedings, Inter-American Conference on Freedom and Security," the Heritage Foundation, 1976.)

"3. *A new treaty is also required for the continued operation of an open, safe, efficient Canal.*"

The committee print report states that if a new treaty is not negotiated, the United States can expect both a deterioration of our relations throughout the hemisphere and "real dangers" to the operation of the canal.

Mr. Speaker, here again the acceptance of such threats as recommended in the report will inevitably cause widespread loss of respect due the United States and invite mob actions that may require far greater use of force in Panama than any previously employed for protecting the canal.

As to the nature of the projected new treaties, I would invite attention to the three conceptual agreements already published in Panama. How this vital interoceanic link could be efficiently maintained, operated, sanitated, and protected under their provisions is beyond my comprehension. (Congressional Record, October 6, 1975, pp. H9661–H9663.) Since assuming responsibility in the 1955 treaty for sanitation in the terminal cities of Panama and Colon, the Republic of Panama has not been able to collect its own garbage from the streets of those cities.

The expression, "open, safe, efficient canal" in conclusion 3 describes precisely the present situation. This fact invites the questions of why should we negotiate for creating a condition that already exists and how could surrender do other than add confusion, turmoil, uncertainty, and graver danger. Panama, situated on one of the most strategic crossroads of the world, is still the objective of predatory forces and requires the presence of a great power for its continued existence as an independent country and that power is the United States.

In addition, I would invite the attention of the Congress to the fact that the Panama Canal Reorganization Act of 1950 (Public Law 841, 81st Congress) specifically provides that the levy of tolls is subject to the provision of section 1, article III of the 1901 Hay-Pauncefote Treaty with Great Britain. Has the Department of State secured the approval of the British Government on this matter? It has not. In fact, recent inquiries made to responsible officials of the State Department revealed that they did not even know about the treaty interests of the British Government in this crucial matter. (Congressional Record, June 10, 1976, p. H5664.)

One of the major United States responsibilities under the Hay-Pauncefote Treaty is protection of the canal against "lawlessness and disorder." This is a task that cannot be evaded for Panama is a land of endemic revolution and endless political intrigue. The idea that surrender of U.S. sovereignty over the Canal Zone to Panama will increase the security of the canal is mere wishful thinking that is entirely irrelevant. (Congressional Record, June 15, 1976 p. E3374.)

Moreover, as previously indicated, the projected surrender violates the 1901 Hay-Pauncefote Treaty with Great Britain. This commitment by the United States for the operation of an Isthmian Canal under the rules governing the operation of the Suez Canal has been accepted and cannot be disregarded. Likewise, Colombia, the sovereign of the Isthmus prior to November 3, 1903, has important treaty rights in the Panama Canal and Railroad by which the United States is bound and so far as can be ascertained that country has not been consulted.

"4. *The timing of the negotiations is very important.*"

The report says that while Panama may be willing to wait until after U.S. Presidential elections for a treaty such delay will make the situation "more dangerous" and the issues "more difficult to resolve."

Mr. Speaker, the prevention of informed public discussion of the canal subject in the United States is unfortunate. The surrender of U.S. sovereignty over the zone would place Panama in the position to nationalize the canal for which the zone is the protective strip just as occurred in 1956 in Egypt after the withdrawal of British forces from the Suez Canal Zone. The people of the United States do not wish to have a Suez Canal situation at Panama and informed leaders in various parts of the Nation are dedicated to prevent any such development.

"5. *A treaty which is mutually beneficial for the United States and for Panama should*, among other things, replace the 1903 Treaty, give Panama sovereignty over the Canal Zone, increase its benefits, and provide for joint boards for making improvements and determining tolls."

Mr. Speaker, are these facts or mere aspirations? Such actions will give away the Canal Zone and, ultimately, the canal itself, as well as burden the United States with grave responsibility without adequate authority—proposals that are a misjudgment of the actual situation. Panama has been, and still is, the greatest single beneficiary of the canal enterprise, with benefits from U.S. Canal Zone sources in 1975 totaling $253,130,000. (*Panama Canal Spillway*, July 16, 1976.) No doubt its benefits will continue to increase in the future as they have in the past.

"6. *While the Panama Canal is not as important strategically as it once was, it remains a valuable economic and military asset to the United States.*"

Mr. Speaker, this statement illustrates the misuse of the word, "strategic," which simply means advantageously located geographically. With traffic in the canal zone close to 14,000 transits annually, it is more "strategic" now than ever. The voyages of more vessels are shortened, more world commerce is benefited, and an important element in U.S. seapower provided. What is needed is its major increase of capacity and operational improvement to meet future needs.

As to the strategic military and naval requirements for the canal, recent U.S. commanders-in-chief, Pacific, have expressed the view that without this interoceanic link, such operations as the Korean and Vietnam wars simply could not have been effectively conducted. Anyone familiar with the history of the Panama Canal prior to and after the attack on Pearl Harbor understands its value to national defense and cannot be confused by clever sophistry or other chicanery.

A second section of the committee print report makes the following recommendations, direct quotations from which are italicized and on each of which I shall make brief comments:

"1. *The debate over a new treaty should concentrate on what is at stake for the United States.*"

The report asserts that "sovereignty and ownership" are not issues for it erroneously alleges that the United States never had either.

Mr. Speaker, the plain terms of the 1903 treaty grant full sovereign rights, power, and authority over the Canal Zone to the United States in perpetuity, and, most significantly, to the entire exclusion of their exercise by the Republic of Panama. Former President, later chief justice, Taft, in a formal policy statement in Panama City, R.P., on November 16, 1910, while attending a banquet given by the president of Panama, made this positive declaration:

"We are here to construct, maintain, operate, and defend a world canal, which runs through the heart of your country, and you have given us the necessary *sovereignty and jurisdiction*, over the part of your country occupied by that canal to enable us to do this effectively. (Ho. Doc. No. 474, 89th Congress, p. 193) (Emphasis provided)"

In addition to sovereignty over the Canal Zone, the United States obtained title to all privately owned land and property in the zone from individual property owners by means of a joint United States-Panamanian claims commission, making the Canal Zone by far our most costly territorial acquisition. (Congressional Record, Dec. 9, 1975, pp. H12, H155.)

Thus the study mission's contention that the United States never had either sovereignty or ownership is simply not true. (Congressional Record, June 9, 1976, pp. H5543–H5546 and June 17, 1976, pp. S9768–S9770.)

In this connection, Mr. Speaker, I would invite the attention of the Congress to a comprehensive legal memorandum on the sovereignty question prepared in May 1959 by the office of the Governor of the Canal Zone and quoted by me in an address to this House on June 23, 1959. A major part of the concluding paragraph of the memorandum follows:

"23. The United States has the exclusive right to the exercise of sovereign rights, power, and authority in the Canal Zone. The Republic of Panama has no right to the exercise of sovereign rights, power, and authority in the Canal Zone, and no right to the prequisites or privileges of a sovereign in the Canal Zone. Any titular sovereignty which the Republic of Panama may possess in the Canal Zone is wholly barren and dormant (reversionary in character) at least so long as the convention of 1903 remains in effect. (Congressional Record, June 23, 1959, pp. 11675–78 and Ho. Doc. No. 474, 89th Congress, pp. 127–34.)"

As I have stated on many previous occasions in regard to what is at stake for the United States, the question of the canal is not a local problem between the United States and Panama but one of global significance. Its control is the prime objective in the struggle by the U.S.S.R. for conquest of the Gulf-Caribbean area. This fact is becoming increasingly understood and cannot be ignored.

"2. *While it may not be possible to reach agreement on all substantive issues in a new treaty, before the 1976 elections, earnest negotiations should continue in an effort to resolve the major outstanding issues and reach an agreement on a draft treaty.*"

Mr. Speaker, the answer to such statements as this should be that U.S. sovereignty over the Canal Zone is not negotiable and that any invasion of the Canal Zone will be repelled with appropriate force.

"3. *Supporters of a new treaty must work to educate the American people and the Members of Congress about the need for it.*"

Mr. Speaker, instead of describing such a program as "education", it should be described as an appeal for the presentation of only one side of a vital issue.

4. *Over the coming months the U.S. military command in the Canal, South Com. should intensify efforts to consolidate and stream line operations and facilities in the Canal Zone.*"

Mr. Speaker, this is part of the demand of Panama for the elimination of U.S. Armed Forces from the Isthmus as was done in 1956 by British Forces stationed in the Suez Canal Zone before nationalization by Egypt at the Suez Canal. The announced Panamanian objective is for the complete removal of the United States from the Isthmus. As to this, I would urge that instead of weakening our forces in the Canal Zone they should be strengthened. A start in this direction would be the reactivation of the U.S. Navy's special service squadron with its home base in the zone. This squadron, operating directly under the direction of the Chief of Naval Operations and not at part of our combat naval forces, served usefully over the many years of its existence before U.S. involvement in World War II in fostering better diplomatic relations with various countries in the Caribbean-Gulf regions and it could do so again as well as being an active symbol of the strength and stability of the United States.

"5. *Members of Congress should examine this issue carefully and consider visiting the Republic of Panama and talking with Panamanian officials and Americans working in Panama.*"

The report then emphasizes such visits as a way for Members to "educate" themselves. It suggests that they talk with Canal Zone officials, American officials in Panama, American businessmen living in Panama, and Panamanians.

Mr. Speaker, here again I suggest that Members talk with expert Canal Zone employees, who are the ones burdened with continuous responsibility for maintaining, operating, sanitating, and protecting the canal and know whereof they speak. Members seeking authentic information can find it in Washington extensively set forth in the Congressional Record and in my volume on "Isthmian Canal Policy Questions" (H. Doc. No. 474, 89th Congress). They do not have to go to Panama for essential facts for there are many well informed and competent experts here, some of them in the Congress.

"6. *Members of Congress should be aware that their comments on the canal are closely followed and widely reported in the Panamanian press.*"

The report then suggests that Members refrain from making statements during the next several months that might hinder the negotiations and that to prevent a draft treaty from even being submitted to the Congress can only harm our national interests.

Mr. Speaker, in contrast, I would urge all Members of Congress concerned with the security of the United States, after obtaining accurate information, to speak out on the canal issues in forthright and unequivocal terms. As previously stated, such information is extensively available in the CONGRESSIONAL RECORD and elsewhere in Washington.

The appendices of the report include the February 7, 1974, Kissinger-Tack "Statement of Principles," to govern the negotiation of a new canal treaty, a December 2, 1975, address by chief negotiator Ellsworth Bunker, a statement by the administrative board, U.S. Catholic Conference of Bishops of February 24, 1975, a November 12, 1975, press release by the U.S. Chamber of Commerce, and a historical documentary summary provided by the Library of Congress.

Although the historical summary provides many important facts the conclusions of the report do not reflect this.

To offset this defect, I have recommended the prompt issue by the Committee on Merchant Marine and Fisheries of its own committee print with authoritative documents, including some addresses by informed Members of the Congress and papers by recognized experts on the canal question.

Mr. Speaker, I would stress again what has often been stated, that the Congress has not been, and is not now being, fully informed about what is transpiring concerning this great U.S. asset, which is essential for interoceanic commerce, national defense, and hemispheric security.

The gravest vital issue in the Isthmian equation, as I have often stated in addresses in the Congress, is not between the United States and Panama, but between the United States and the Moscow-Havana axis with which the Panamanian dictatorship is closely allied.

Mr. Speaker, the Gulf-Caribbean areas are now well on their way toward becoming Red lakes. Upon the fate of the Canal Zone depends that of the canal. Upon the fate of the canal depends that of the entire Caribbean-Gulf basin and on it depends the survival of the Untied States as a free and independent nation. Such realities in the global situation cannot be disregarded, but must be faced.

The most crucial question involved is whether the Soviet beachhead in Cuba shall be expanded to include the entire Caribbean-Gulf basins for the encirclement of the United States or should these strategic waters be preserved as peaceful moats for hemispheric security and free navigation for the vessels of all nations. Continued undiluted U.S. sovereign control of the Canal Zone is the key to the right solution.

Mr. Speaker, the United States is a great and powerful nation. It has friends, but also enemies and this requires constant vigil over our ramparts and strategic outposts, among which the Panama Canal is crucial. In viewing the situation we must look to the future and not to the past. The time has come for a constructive, definite, economic and historically based policy derived from experience. The program for implementing such policy is simple:

First. Adoption by the Congress of pending resolutions reaffirming and making definite U.S. policy for the continued undiluted sovereign control over the Canal Zone and canal (S. Res. 97 and H. Res. 75, 94th Congress);

Second. Termination of the current treaty negotiations;

Third. Enactment of pending measures for the major modernization of the existing treaty provisions (H.R. 15178, 94th Congress);

Fourth. Authorization for the election of a nonvoting delegate in the Congress by U.S. citizens residing in the Canal Zone (Congressional Record, June 5, 1975, p. H5035 and October 28, 1975, p. S18714);

Fifth, Reactivation of the U.S. Navy's special service squadron with home base in the Canal Zone. (Congressional Record, May 28, 1976, p. S8276.)

When the immensely complicated canal problem is evaluated from all its more significant angles, this program provides the best solution (Congressional Record, December 9, 1975, pp. H12155–H12161). Not only that, the current national debate on the canal question is serving as a catalyst for the restoration of the national will of the United States and of its true status as a great power in the struggle for the defense of freedom and civilization.

95TH CONGRESS
1ST SESSION

H. RES. 92

IN THE HOUSE OF REPRESENTATIVES

JANUARY 10, 1977

Mr. FLOOD submitted the following resolution; which was referred to the Committee on International Relations

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RESOLUTION

Whereas United States diplomatic representatives are presently engaged in negotiations with representatives of the de facto Revolutionary Government of Panama, under the declared purpose to surrender to Panama, at an early date, United States sovereign rights and to abandon its treaty obligations, as defined below, to maintain, operate, protect, and otherwise govern the United States-owned canal and its protective frame of the Canal Zone, herein designated as the "canal" and the "zone", respectively, situated within the Isthmus of Panama; and

Whereas the United States is obligated by international agreement to regulate, manage, and protect a ship canal, guaranteeing its neutrality to the shipping of all nations at equal toll rates, to wit:

The Hay-Pauncefote Treaty of 1901 between the United States and Great Britain, under which the United States adopted the principles of the Convention of Constantinople of 1888 as the rules for operation, regulation, and management of the canal; and

Whereas title to and ownership of the zone, under the right "in perpetuity" to exercise sovereign control thereof, were vested entirely and absolutely in the United States and recognized to have been so vested in certain solemnly ratified treaties by the United States with Panama and Colombia, to wit:

(1) The Hay-Bunau-Varilla Treaty of 1903 between the Republic of Panama and the United States, by the terms of which the Republic of Panama granted to the United States in perpetuity the use, occupation, and control of the zone with full sovereign rights, power, and authority over the zone for the construction, maintenance, operation, sanitation, and protection of the canal to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power, or authority; and

(2) The Thomson-Urrutia Treaty of April 6, 1914, proclaimed March 30, 1922, between the Republic of Colombia and the United States, under which the Republic of Colombia recognized that the title to the canal and the Panama Railroad is vested "entirely and absolutely" in the United States, which treaty granted important rights in the use of the canal and railroad to Colombia; and

Whereas the United States, in addition to having so acquired title to and ownership of the zone by constitutional means pursuant to congressional authorization, purchased all privately owned land and property in the zone, making it the most costly United States territorial possession; and

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Whereas the United States since 1904 has continuously occupied and exercised sovereign control over the zone, constructed the canal, and, since 1914, for a period of more than sixty years, operated the canal in a highly efficient manner at reasonable toll rates to the vessels of all nations without discrimination under the terms of the above-mentioned treaties, thereby honoring its obligations; and

Whereas from 1904 through June 30, 1974, the United States made a total investment in the canal, including defense, at a cost to the taxpayers of the United States of over $6,880,370,000; and

Whereas the investment of the United States in the canal includes the sacrifices of many thousands of United States citizens who have worked to construct the canal, to keep it operating smoothly and efficiently, and to protect it; and

Whereas the canal is of vital and imperative importance to hemispheric defense and to the security of the United States and Panama; and

Whereas approximately 70 per centum of canal traffic either originates or terminates in United States ports, making the continued operation of the canal by the United States vital to its economy; and

Whereas the people of the United States have exhibited strong support for retention of full and undiluted jurisdiction over the canal and zone, and the Constitution insures the supremacy of the people; and

Whereas Panama has, under the terms of the 1903 treaty and the 1936 and 1955 revisions thereof, been well compensated for the sovereign rights, power, and authority it granted to the United States, in such significantly beneficial manner that

said compensation and correlated benefits have constituted a major portion of the economy of Panama, giving it the highest per capita income in all of Central America; and

Whereas the long established friendly and cooperative relations between the United States and the Republic of Panama as a consequence of the benefits flowing from the present treaty structure are prone to deterioration by the dilution of any United States sovereignty or jurisdiction in the canal and zone; and

Whereas the present negotiations pursuant to the February 7, 1974, "Agreement on Principles" signed without congressional authorization by United States Secretary of State Henry A. Kissinger, and by Panamanian Foreign Minister Juan A. Tack, constitute a clear and present danger to the hemispheric security and the successful operation of the canal by the United States under its treaty obligations; and

Whereas the present treaty negotiations are being conducted under a cloak of unwarranted secrecy, thus withholding from our people and their representatives in Congress information vital to the commerce and security of the United States; and

Whereas the United States House of Representatives, on February 2, 1960, adopted House Concurrent Resolution 459, Eighty-sixth Congress, reaffirming the sovereignty of the United States over the zone territory by the overwhelming vote of three hundred and eighty-two to twelve, thus demonstrating the firm determination of the people that the United States should maintain its indispensable sovereignty and jurisdiction over the canal and the zone; and

Whereas under article IV, section 3, clause 2, of the United States Constitution, the power to dispose of territory or other property of the United States is specifically vested in the Congress, which includes the House of Representatives; and

Whereas the Communist regime in Cuba has made that country a satellite of the Union of Soviet Socialist Republics in violation of the Monroe Doctrine; and

Whereas the proposed surrender of United States sovereign control over the zone and canal to Panama, which is unable to defend them, would invite the Union of Soviet Socialist Republics to establish its power still more firmly in the strategic center of the Americas and threaten the operations and projected modernization of the canal; and

Whereas such a takeover would transform the Caribbean-Gulf of Mexico basin into a strategic Soviet stronghold; and

Whereas the Congress of the United States is invested with constitutional responsibilities to provide for the common defense and general welfare of the United States, to regulate commerce with foreign nations, to raise and support armies and provide and maintain a Navy, to make all needful rules and regulations respecting the territory of the United States, and to make all laws necessary and proper for carrying into execution these and other powers, all of which denote that it is the solemn duty of Congress to safeguard the interests of the people of the United States in the canal and zone: Now, therefore, be it

Resolved, That it is the sense of the House of Representatives of the United States of America that—

(1) the Government of the United States should retain uninpaired and protect its sovereign rights, power and authority, and jurisdiction over the Panama Canal and the entire Canal Zone, and should in no way cede, dilute, forfeit, negotiate, or transfer any such sovereign rights, power, authority, jurisdiction, territory, or property, all of which are indispensably necessary for the maintenance, operation, sanitation and protection, and for the proposed major modernization of the Panama Canal, as well as the security of the United States and the entire Western Hemisphere; and

(2) there be no relinquishment or surrender of any presently vested United States sovereign right, power, or authority in the Canal Zone without prior authorization by the Congress; and

(3) there be no recision or cession or other divestiture of any United States territory or property in the Canal Zone, tangible or intangible, to Panama or any other entity, country or international organization, without prior authorization by the Congress (House and Senate), as provided in article IV, section 3, clause 2, of the United States Constitution.

95TH CONGRESS
1ST SESSION

H. R. 1587

IN THE HOUSE OF REPRESENTATIVES

JANUARY 10, 1977

Mr. FLOOD (for himself, Mr. MURPHY of New York, and Mr. SNYDER) introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

A BILL

To provide for the increase of capacity and the improvement of operations of the Panama Canal after the President terminates negotiations by the United States with the Republic of Panama to surrender the Panama Canal and the Canal Zone to the Republic of Panama, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Panama Canal Modernization Act."

SEC. 2. The Congress hereby finds and declares that—

(1) the United States of America is a high contracting party to the Hay-Pauncefote Treaty of 1901 in force with Great Britain;

(2) the treaty serves as the basis for daily regulation and management of the Panama Canal, including the establishment of tolls for use of the canal;

(3) the treaty imposes upon the United States obligations to uphold "the general principle of neutralization" of the Panama Canal; to maintain it "free and open to the vessels of commerce and of war of all nations observing these rules, on terms of entire equality, so that there shall be no discrimination against any such nation, or its citizens or subjects, in respect of the conditions or charges of traffic, or otherwise"; to insure that "the canal shall never be blockaded, nor shall any right of war be exercised nor any act of hostility be committed within it"; and "to protect it against lawlessness and disorder";

(4) under the direction of the President, the United States Department of State, despite the obligations of the United States under the treaty, has been negotiating with the Republic of Panama to cede the Canal Zone and Panama Canal to that country;

(5) such cession would render the United States incapable of fulfilling its obligations under the treaty;

(6) further, the United States is a party to a treaty with the Republic of Colombia signed April 6, 1914, by which that country recognizes the title to the

Panama Canal and Panama Railroad as "vested entirely and absolutely in the United States of America, without any incumbrances or indemnities whatever", and by which the United States guarantees that "the products of the soil and industry of Colombia passing through the canal, as well as the Colombian mails, shall be exempt from any charge or duty other than those to which the products and mails of the United States may be subject", an obligation we could not fulfill upon the surrender of the Canal Zone and waterway to the Republic of Panama or to any international organization;

(7) the undertaking of the United States in constructing, maintaining, operating, sanitating, and protecting the Panama Canal has proven to be of enormous benefit to the people of the United States, the Republic of Panama, and the entire world;

(8) the interests of defense and interoceanic commerce, and the increasing dimensions of ships, require an increase of canal capacity and operational improvement of existing facilities and installations;

(9) the greater marine operational and logistical capability resulting from a modernization of the canal based on decades of actual experience in transiting over half a million vessels would permit increased canal revenues; improved efficiency and economy of operations;

simplified canal management and defense; capacity for handling larger ships, lessening of transit time; increased safety through diminished navigational hazards; reduction of fatigue factors for pilot personnel; minimization of dispatching problems; and a summit level lake anchorage and traffic reservoir at the Pacific end comparable to the Gatun Lock-Lake arrangement at the Atlantic end, allowing unrestricted operation of all locks, elimination of traffic bottlenecks, mitigation of the effect of fog on canal operations, and lessening of lockage water surges in Gaillard Cut;

(10) in addition to stimulating United States trade, industry, and employment, canal modernization would bring major benefits to intercoastal and international commerce and to hemispheric states, including reduced cost per cargo-ton to United States and foreign producers, suppliers, and consumers of the world's goods, as well as to canal users; generation of greater economic well-being for the American nations through improved trade and communication; strengthened hemispheric security through the canal's increased capacity for marine operations, and increased prosperity and economic opportunity for the people of the Republic of Panama by virtue of the enormous outlays for new construction involved

in this Terminal Lake—Third Locks Project in the Canal Zone;

(11) canal modernization by the United States, initially called the Third Locks Project, was authorized by Congress in 1939 at a cost not to exceed $277,000,000, was started in 1940, but was suspended in 1942 because of World War II priorities;

(12) $76,357,405 was expended on that project before suspension, and later an additional $95,000,000 was expended on the enlargement of the Gaillard Cut, making a total of $171,000,000 already expended toward the major modernization of the existing canal;

(13) no new treaty or agreement with the Republic of Panama was necessary for the United States to initiate such modernization in 1939 inasmuch as the United States, in accordance with the Spooner Act of 1902, and the treaty of 1903 with the Republic of Panama, paid that republic $10,000,000 to acquire control of the Canal Zone; the Republic of Panama by said treaty of 1903 granted to the United States in perpetuity full sovereign rights, power, and authority over the Canal Zone, "to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power, or authority" (a grant recognized and not changed by subsequent treaties of 1936 and

1955 between the two nations) ; Panama by said treaty recognized as absolute the title of the United States to all lands and properties and rights purchased from the several companies holding railroad or canal concessions on the Isthmus of Panama; and under said treaty the United States took title to all remaining privately owned land property in the zone, purchasing such tracts from individual owners;

(14) completion under this Act of such modernization as modified and improved by additional experience with canal operations and current technology requires no new treaty arrangements with the Republic of Panama;

(15) it would be both unwise and a shedding of its responsibility to the citizen-taxpayers of the United States for the Congress to authorize any funds for modernization of the Panama Canal should there be any relinquishment or surrender of the sovereign rights, power, and authority currently exercised exclusively by the United States over the Canal Zone and the waterway;

(16) although one reason for approval of modernization in 1939 was to facilitate conversion of the Panama Canal to a so-called "sea level" waterway, at this time all factors in combination indicate no weighty ad-

vantage to be gained in converting the existing high level lake and lock canal to a "sea level" canal—actually a tidal level lock canal of very complicated construction necessitated both by alternating currents that would be set up by twenty-two-foot Pacific maximum tidal range versus Atlantic tidal range of only some twenty-two inches, and by flood control requirements—or in the construction of a new "sea level" canal at a different site, prior to either of which treaty modifications or new treaty arrangements, respectively, would have to be reached; nevertheless should new technology of the future or other considerations indicate a conversion of the Panama Canal, expenditures made in consequence of this Act shall not have been wasted, but rather shall have facilitated such a conversion by these accomplishments: (a) continuous traffic through the canal would be permitted during conversion construction; (b) the additional lockages would permit movement of construction equipment and excavated material as required; (c) lock overhaul and other major maintenance could be accomplished during conversion without traffic stoppage; and (d) transits even in excess of today's normal traffic could be handled during conversion.

SEC. 3. (a) Except as provided in section 15, the Governor of the Canal Zone, under the supervision of the

Secretary of the Army, is authorized and directed to prosecute the work necessary to increase the capacity and improve the operations of the Panama Canal through the adaptation of the third locks project set forth in the report of the Governor of the Panama Canal, dated February 24, 1939 (House Document Numbered 210, Seventy-sixth Congress), and authorized to be undertaken by the Act of August 11, 1939 (53 Stat. 1409; Public Numbered 391, Seventy-sixth Congress), with usable lock dimensions of one hundred and forty feet by one thousand two hundred feet by not less than forty-five feet, except as recommended otherwise by the Board created under section 4 of this Act, and including the following: elimination of the Pedro Miguel locks, and consolidation of all Pacific locks near Agua Dulce in new lock structures to correspond with the locks capacity at Gatun, raise the summit water level to its optimum height of approximately ninety-two feet, and provide a summit-level lake anchorage at the Pacific end of the canal, together with such appurtenant structures, works, and facilities, and enlargements or improvements of existing channels, structures, works, and facilities, as may be deemed necessary, at an estimated total cost not to exceed $1,250,000,000, which is hereby authorized to be appropriated for this purpose: *Provided, however,* That the initial appropriation for the fiscal year 1978 shall not exceed $50,000,000.

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(b) The provisions of the second sentence and the second paragraph of the Act of August 11, 1939 (53 Stat. 1409; Public Numbered 391, Seventy-sixth Congress), shall apply with respect to the work authorized by subsection (a) of this section. As used in such Act, the terms "Governor of the Panama Canal", "Secretary of War", and "Panama Railroad Company" shall be held and considered to refer to the "Governor of the Canal Zone", "Secretary of the Army", and "Panama Canal Company", respectively, for the purposes of this Act.

(c) In carrying out the purposes of this Act, the Governor of the Canal Zone may act and exercise his authority as President of the Panama Canal Company and may utilize the services and facilities of that company.

SEC. 4. (a) There is hereby established a board, to be known as the "Panama Canal Advisory and Inspection Board" (hereinafter referred to as the "Board").

(b) The Board shall be composed of five members who are citizens of the United States of America. Members of the Board shall be appointed by the President, by and with the advice and consent of the Senate, as follows:

(1) One member from private life, experienced and skilled in private business (including engineering).

(2) Two members from private life, experienced and skilled in the science of engineering.

(3) One member who is a commissioned officer of the Corps of Engineers, United States Army (retired).

(4) One member who is a commissioned officer of the line, United States Navy (retired).

(c) The President shall designate as Chairman of the Board one of the members experienced and skilled in the science of engineering.

(d) The President shall fill each vacancy on the Board in the same manner as the original appointment.

(e) The Board shall cease to exist on that date designated by the President as the date on which its work under this Act is completed.

(f) The Chairman of the Board shall be paid basic pay at the rate provided for level II of the Executive Schedule in section 5313 of title 5, United States Code. The other members of the Board appointed from private life shall be paid basic pay at a per annum rate which is $500 less than the rate of basic pay of the Chairman. The members of the Board who are retired officers of the United States Army and the United States Navy each shall be paid at a rate of basic pay which, when added to his pay as a retired officer, will establish his total rate of pay from the United States at a per annum rate which is $500 less than the rate of basic pay of the Chairman.

(g) The Board shall appoint without regard to the

provisions of title 5, United States Code, governing appointments in the competitive service, a Secretary and such other personnel as may be necessary to carry out its functions and activities and shall fix their rates of basic pay in accordance with chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates. The Secretary and other personnel appointed by the Board shall serve at the pleasure of the Board.

SEC. 5. (a) The Board is authorized and directed to study and review all plans and designs for the Third Locks project referred to in section 3 (a) of this Act, to make on-the-site studies and inspections of the Third Locks project, and to obtain current information on all phases of planning and construction with respect to such project. The Governor of the Canal Zone shall furnish and make available to the Board at all times current information with respect to such plans, designs, and construction. No construction work shall be commenced at any stage of the Third Locks project unless the plans and designs for such work, and all changes and modifications of such plans and designs, have been submitted by the Governor of the Canal Zone to, and have had the prior approval of, the Board. The Board shall report promptly to the Governor of the Canal Zone the results of its studies and reviews of all plans and designs, including changes and modifications thereof, which have been sub-

mitted to the Board by the Governor of the Canal Zone, together with its approval or disapproval thereof, or its recommendations for changes or modifications thereof, and its reasons thereof.

(b) The Board shall submit to the President and to the Congress an annual report covering its activities and functions under this Act and the progress of the work on the Third Locks project and may submit, in its discretion, interim reports to the President and to the Congress with respect to these matters.

SEC. 6. For the purpose of conducting all studies, reviews, inquiries, and investigations deemed necessary by the Board in carrying out its functions and activities under this Act, the Board is authorized to utilize any official reports, documents, data, and papers in the possession of the United States Government and its officials; and the Board is given power to designate and authorize any member, or other personnel, of the Board, to administer oaths and affirmations, subpena witnesses, take evidence, procure information and data, and require the production of any books, papers, or other documents and records which the Board may deem relevant or material to the performance of the functions and activities of the Board. Such attendance of witnesses, and the production of documentary evidence, may be required from any place in the United States, or any territory, or any

other area under the control or jurisdiction of the United States, including the Canal Zone.

SEC. 7. In carrying out its functions and activities under this Act, the Board is authorized to obtain the services of experts and consultants or organizations thereof in accordance with section 3109 of title 5, United States Code, at rates not in excess of $200 per diem.

SEC. 8. Upon request of the Board, the head of any department, agency, or establishment in the executive branch of the Federal Government is authorized to detail, on a reimbursable or nonreimbursable basis, for such period or periods as may be agreed upon by the Board and the head of the department, agency, or establishment concerned, any of the personnel of such department, agency, or establishment to assist the Board in carrying out its functions and activities under this Act.

SEC. 9. The Board may use the United States mails in the same manner and upon the same conditions as other departments and agencies of the United States.

SEC. 10. The Administrator of General Services or the President of the Panama Canal Company, or both, shall provide, on a reimbursable basis, such administrative support services for the Board as the Board may request.

SEC. 11. The Board may make expenditures for travel and subsistence expenses of members and personnel of the

Board in accordance with chapter 57 of title 5, United States Code, for rent of quarters at the seat of government and in the Canal Zone, and for such printing and binding as the Board deems necessary to carry out effectively its functions and activities under this Act.

SEC. 12. All expenses of the Board shall be allowed and paid upon the presentation of itemized vouchers therefor approved by the Chairman of the Board or by such other member or employee of the Board as the Chairman may designate.

SEC. 13. There are hereby authorized to be appropriated to the Board each fiscal year such sums as may be necessary to carry out its functions and activities under this Act.

SEC. 14. Any provision of the Act of August 11, 1939 (54 Stat. 1409; Public Numbered 391, Seventy-sixth Congress), or of any other statute, inconsistent with any provision of this Act is superseded, for the purposes of this Act, to the extent of such inconsistency.

SEC. 15. (a) This Act shall not take effect until the date the Speaker of the House of Representatives and the President pro tempore of the Senate receive written notice from the President that thenceforth during his term or terms of office, no negotiations will be conducted, nor will any plan be initiated, for the surrender by the United States of the Canal Zone and the Panama Canal, in whole or in

part, to the Republic of Panama, or to any international organization.

(b) The provisions of this Act shall remain in effect only so long as all the sovereign rights, power, and authority granted in perpetuity to the United States by the Republic of Panama in articles II and III of the convention between the United States and the Republic of Panama signed on November 18, 1903, and reaffirmed in the General Treaty of Friendship and Cooperation signed March 2, 1936, and the Treaty of Mutual Understanding and Cooperation signed January 25, 1955, remain unaltered.

SEC. 16. The assets created by the expenditure of the funds authorized by this Act shall be considered by the Panama Canal Company as depreciable or nondepreciable in accordance with the provisions of subsection (b) of section 412 of title 2 Canal Zone Code (76A Stat. 27) as amended. The Company shall in its calculations of toll rates include as annual expense such amounts as will over the period of seventy-five years allow for a payback to the United States Treasury of 100 per centum of the funds appropriated in consequence of the provisions of this Act, except that in recognition of the defense value of said assets, and in conformity with the purposes of subsection (c) of section 412 of title 2 Canal Zone Code (76A Stat. 27), interest during construction shall not be included for purposes of repayment.

PANAMA CANAL

Sovereignty and Modernization

Memorial to The Congress

1975

* * *

COMMITTEE FOR CONTINUED U.S. CONTROL

OF THE PANAMA CANAL

3704 University Drive
Fairfax, Va. 22030

Committee for Continued U.S. Control
of the Panama Canal

PANAMA CANAL: SOVEREIGNTY AND MODERNIZATION.

Honorable Members of the
Congress of the United States.

The undersigned, who have studied various aspects of interoceanic canal history and problems, wish to express their views:

1) The report of the interoceanic canal inquiry, authorized under Public Law 88-609, headed by Robert B. Anderson, recommending construction of a new canal of so-called sea level design in the Republic of Panama, was submitted to the President on December 1, 1970. The proposed canal, initially estimated to cost $2,880,000,000 exclusive of the costs of right of way and inevitable indemnity to Panama, would be 10 miles West of the existing Canal. This recommendation, which hinges upon the surrender to Panama by the United States of all sovereign control over the U.S.-owned Canal Zone, has rendered the entire canal situation so acute and confused as to require rigorous clarification.

2) An important new angle developed in the course of the sea level inquiry is that of the Panamic biota (fauna and flora), on which subject, a symposium of recognized scientists was held on March 4, 1971 at the Smithsonian Institution. That gathering was overwhelmingly opposed to any sea level project because of the biological dangers to marine life incident to the removal of the fresh water barrier between the Oceans, now provided by Gatun Lake, including in such dangers the infestation of the Caribbean Sea and Atlantic Ocean with the poisonous yellow-bellied Pacific sea snake and the crown of thorns starfish.

3) The construction by the United States of the Panama Canal (1904-1914) was the greatest industrial enterprise in history. Undertaken as a long-range commitment by the United States, in fulfillment of solemn treaty obligations (Hay-Pauncefote Treaty of 1901) as a "mandate for civilization" in an area notorious as the pest hole of the world and as a land of endemic revolution, endless intrigue and governmental instability (Flood, "Panama: Land of Endemic Revolution..." C.R., August 7, 1969), the task was accomplished in spite of physical and health conditions that seemed insuperable. Its subsequent efficient management and operation on terms of "entire equality" with tolls that are "just and equitable" have won the praise of the world, particularly countries that use the Canal.

4) Full sovereign rights, power and authority of the United States over the Canal Zone territory and Canal were acquired by treaty grant in perpetuity from Panama (Hay-Bunau=Varilla Treaty of 1903). In addition to the indemnity paid by the United States to Panama for the grant in perpetuity of the indispensably necessary sovereignty and jurisdiction, all privately owned land and property in the Zone were purchased by the United States from individual owners; and Colombia, the sovereign of the

Isthmus before Panama's independence, has recognized the title to the Panama Canal and Railroad as vested "entirely and absolutely" in the United States (Thomson-Urrutia Treaty of 1914-22). The cost of acquiring the Canal Zone, as of March 31, 1964, totalled $144,568,571, making it the most expensive territorial extension in the history of the United States. Because of the vast protective obligations of the United States, the perpetuity provisions in the 1903 Treaty assure that Panama will remain a free and independent country in perpetuity, for these provisions bind the United States as well as Panama.

5) The net total investment by the taxpayers of our country in the Panama Canal enterprise, including its defense, from 1904 through June 30, 1974 was $6,880370,000; which, if converted into 1974 dollars, would be far greater. Except for the grant by Panama of full sovereign powers over the Zone territory, our Government would never have assumed the grave responsibilities involved in the construction of the Canal and its later operation, maintenance, sanitation, protection and defense.

6) In 1939, prior to the start of World War II, the Congress authorized, at a cost not to exceed $277,000,000, the construction of a third set of locks known as the Third Locks Project, then hailed as "the largest single current engineering work in the world." This Project was suspended in May 1942 because of more urgent war needs, and the total expenditures thereon were $76,357,405, mostly on lock site excavations at Gatun and Miraflores, which are still usable. Fortunately, no excavation was started at Pedro Miguel. The program for the enlargement of Gaillard Cut and correlated channel improvements, started in 1959, was completed in 1970 at a cost of $95,000,000. These two works together represent an expenditure of more than $171,000,000 toward the major modernization of the existing Panama Canal. Under current treaty provisions Panama has proclaimed that the word "maintenance" in the treaty permits "expansion and new construction" for the existing Canal (C.R., July 24, 1939).

7) As the result of canal operations in the crucial period of World War II, there was developed in the Panama Canal organization the first comprehensive proposal for the major operational improvement and increase of capacity of the Canal as derived from actual marine experience, known as the Terminal Lake--Third Locks Plan. This conception included provisions for the following:

(1) Elimination of the bottleneck Pedro Miguel Locks.
(2) Consolidation of all Pacific Locks South of Miraflores.
(3) Raising the Gatun Lake water level to its optimum height (about 92')
(4) Construction of one set of larger locks.
(5) Creation at the Pacific end of the Canal of a summit-level terminal lake anchorage for use as a traffic reservoir to correspond with the layout at the Atlantic end, which would improve marine operations by eliminating lockage surges in Gaillard

Cut, mitigate the effect of fog on Canal capacity, reduce transit time, diminish the number of accidents, and simplify the management of the Canal.

8) Competent, experienced engineers have officially reported that all "engineering considerations which are associated with the plan are favorable to it." Moreover, such a solution:

(1) Enables the maximum utilization of all work so far accomplished on the Panama Canal, including that on the suspended Third Locks Project.
(2) Avoids the danger of disastrous slides.
(3) Provides the best operational canal practicable of achievement with the certainty of success.
(4) Preserves and increases the existing economy of Panama.
(5) Avoids inevitable Panamanian demands for damages that would be involved in the proposed sea level project.
(6) Averts the danger of a potential biological catatastrophe with international repercussions that recognized scientists fear might be caused by constructing a salt water channel between the Oceans.
(7) Can be constructed at "comparatively low cost" and being "an enlargement of existing facilities" without requiring additional "lands and waters" avoids the necessity for a new canal treaty with Panama.

9) All of these facts are elemental considerations from both U.S. national and international viewpoints and cannot be ignored, especially the diplomatic and treaty aspects. In connection with the latter, it should be noted that the original Third Locks Project, being only a modification of the existing Canal, and wholly within the Canal Zone, did not require a new treaty with Panama. Nor, as previously stated, would the Terminal Lake--Third Locks Plan require a new treaty. These are paramount factors in the overall equation.

10) In contrast, the persistently advocated and strenuously propagandized Sea-Level Project at Panama, initially estimated in 1970 to cost $2,880,000,000, exclusive of the costs of right of way and indemnity to Panama, has long been a "hardy perennial," according to former Governor Jay J. Morrow. It seems that no matter how often the impossibility of realizing any such proposal within practicable limits of cost and time is demonstrated, there will always be someone to argue for it; and this, despite the economic, engineering, operational, marine biological and navigational superiority of the Terminal Lake solution. Moreover, any sea-level project, whether in the U.S. Canal Zone territory or elsewhere, will require a new treaty or treaties with the countries involved in order to fix the specific conditions for its construction; and this would involve a huge indemnity and a greatly increased annuity that would have to be added to the cost of construction and reflected in tolls, or be wholly borne by the taxpayers of the United States.

11) Starting with the 1936-39 Treaty with Panama, there has been a sustained erosion of United States rights, power and authority on the Isthmus, culminating in the reopening in 1971 of negotiations for a proposed new canal treaty or treaties that would:

(1) Surrender United States sovereignty over the Canal Zone to Panama;
(2) Make that weak, technologically primitive and unstable country a senior partner in the management and defense of the Canal;
(3) Ultimately give to Panama not only the existing Canal, but also any new one constructed in Panama to replace it, all without any compensation whatever and all in derogation of Article IV, Section 3, Clause 2 of the U.S. Constitution. This Clause vests the power to dispose of territory and other property of the United States in the entire Congress (House and Senate) and not in the treaty-making power of our Government (President and Senate)--a Constitutional provision observed in the 1955 Treaty with Panama.

12) It is clear from the conduct of our Panama Canal policy over many years that policy-making elements within the Department of State, in direct violation of the indicated Constitutional provision, have been, and are yet, engaged in efforts which will have the effect of diluting or even repudiating entirely the sovereign rights, power and authority of the United States with respect to the Canal and of dissipating the vast investment of the United States in the Panama Canal project. Such actions would eventually and inevitably permit the domination of this strategic waterway by a potentially hostile power that now indirectly controls the Suez Canal. That Canal, under such domination, ceased to operate in 1967 with vast consequences of evil to world trade.

13) Extensive debates in the Congress over the past decade have clarified and narrowed the key canal issues to the following:

(1) Retention by the United States of its undiluted and indispensable sovereign rights, power and authority over the Canal Zone territory and Canal as provided by existing treaties;
(2) The major modernization of the existing Panama Canal as provided for in the Terminal Lake--Third Locks Plan.

Unfortunately, these efforts have been complicated by the agitation of Panamanian extremists, aided and abetted by irresponsible elements in the United States, aiming at ceding to Panama complete sovereignty over the Canal Zone and eventually, the ownership of the existing Canal and any future canal in the Zone or in Panama that might be built by the United States to replace it.

14) In the 1st Session of the 93rd Congress identical bills were introduced in both House and Senate to provide for the major increase of capacity and operational improvement of the existing Panama Canal by modifying the authorized Third Locks Project to embody the principles of the previously mentioned Terminal Lake solution, which competent authorities

consider would supply the best operational canal practicable of achievement, and at least cost without treaty involvement.

15) Starting in January 1975 many Members of Congress sponsored resolutions expressing the sense of the House of Representatives that the United States should maintain and protect its sovereign rights and jurisdiction over the Panama Canal enterprise, including the Canal Zone, and not surrender any of its powers to any other nation or to any international organization in derogation of present treaty provisions.

16) The Panama Canal is a priceless asset of the United States, essential for interoceanic commerce and Hemispheric security. The recent efforts to wrest its control from the United States trace back to the 1917 Communist Revolution and conform to long range Soviet policy of gaining domination over key water routes as in Cuba, which flanks the Atlantic approach to the Panama Canal, and as was accomplished in the case of the Suez Canal, which the Soviet Union now wishes opened in connection with its naval buildup in the Eastern Mediterranean and Indian Ocean. Thus, the real issue at Panama, dramatized by the Communist take over of strategically located Cuba and Chile, is not United States control versus Panamanian but continued United States sovereignty versus Soviet control. This is the issue that should be debated in Congress, especially in the Senate. Panama is a small, weak country occupying a strategic geographical position that is the objective of predatory power, requiring the presence of the United States on the Isthmus in the interest of Hemispheric security and international order.

17) In view of all the foregoing, the undersigned urge prompt action as follows:

(1) Adoption by the House of Representatives of pending Canal Zone sovereignty resolutions and,
(2) Enactment by the Congress of pending measures for the major modernization of the existing Panama Canal.

To these ends, we respectfully urge that hearings be promptly held on the indicated measures and that Congressional policy thereon be determined for early prosecution of the vital work of modernizing the Panama Canal, now approaching saturation of capacity.

Dr. Karl Brandt Palo Alto, Calif.	Economist, Hoover Institute, Stanford Former Chairman, President's Council of Economic Advisors
Comdr. Homer Brett, Jr. Chevy Chase, Md.	Former Intelligence Officer, Caribbean area
Hon. Ellis O. Briggs Hanover, N.H.	U.S. Ambassador (retired) and Author
Dr. John C. Briggs Tampa, Fla.	Professor of Biology University of South Florida
William B. Collier Santa Barbara, Calif.	Business Executive with Engineering and Naval Experience
Lt. Gen. Pedro A. del Valle Annapolis, Md.	Intelligence Analyst Former Commanding General, 1st Marine Div.
Herman H. Dinsmore New York, N.Y.	Former Associate Foreign Editor, New York Times Editorialist
Dr. Lev E. Dobriansky Alexandria, Va.	Professor of Economics, Georgetown Univ.
Dr. Donald Dozer Santa Barbara, Calif.	Historian, University of California, Santa Barbara Authority on Latin America
Lt. Gen. Ira C. Eaker Washington, D.C.	Former Commander-in-Chief, Allied Air Forces, Mediterranean Analyst and Commentator on National Security Questions
K. V. Hoffman Richmond, Va.	Editor and Author
Dr. Walter D. Jacobs College Park, Md.	Professor of Government and Politics University of Maryland
William R. Joyce, Jr., J.D. Washington, D.C.	Lawyer
Maj. Gen. Thomas A. Lane MacLean, Va.	Engineer and Author
Edwin J. B. Lewis Washington, D.C.	Professor of Accounting, George Washington University Past President, Panama Canal Society of Washington, D.C.

Dr. Leonard B. Loeb Berkeley, Calif.	Professor of Physics (Emeritus), University of California
William Loeb Manchester, N.H.	Publisher and Author
Lt. Col. Matthew P. McKeon Springfield, Va.	Intelligence Analyst, Editor and Author
Dr. Howard A. Meyerhoff Tulsa, Okla.	Consulting Geologist Formerly Head of Department of Geology University of Pennsylvania
Richard B. O'Keeffe Fairfax, Va.	Asst. Dir. of Library, George Mason University Research Consultant on Panama Canal, The American Legion
Capt. C. H. Schildhauer Owings Mills, Md.	Aviation Executive
V. Adm. T. G. W. Settle Washington, D.C.	Former Commander, Amphibious Forces, Pacific
Jon P. Speller New York, N.Y.	Author and Editor
Harold Lord Varney New York, N.Y.	President, Committee on Pan American Policy, New York Authority on Latin American Policy Editor
Capt. Franz O. Willenbucher Bethesda, Md.	Lawyer and Executive
Dr. Francis G. Wilson Washington, D.C.	Professor of Political Science (Emeritus) University of Illinois Author and Editor

Institutions are listed for identification purposes only.

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(202) 543-4313

David Brower, *President*

For further information:
George Alderson (202) 293-2732
Jeffrey Knight (202) 543-4312

For release: MONDAY, APRIL 14, 1975

ENVIRONMENTALISTS OPPOSE PANAMA SEA-LEVEL CANAL

WASHINGTON, D.C., April 14 -- Ten national and international environmental organizations have urged President Ford to call a halt to the State Department's attempts to negotiate an option to build a new Sea-level Panama Canal. In a telegram to the President, the groups said, "We will oppose any treaty with Panama that authorizes or allows the construction of a new Sea-level Canal."

Environmentalists' concern is based on the findings of marine scientists. A prestigious National Academy of Sciences panel in 1970 cited "grave potential dangers" that could result from the project as a consequence of the intermixture of now-separate biological systems in the tropical Caribbean Sea and Pacific Ocean. There is no intermixing at present because marine organisms cannot survive in the existing lock-type Panama Canal, which contains only freshwater.

The National Academy of Sciences panel referred to the Sea-level Canal as "a gigantic natural experiment. Its consequences are unforeseeable." Among the possible results, the panel said, could be a decline in shrimp or fin fisheries.

The 10 environmental organizations criticized the State Department for injecting the Sea-level Canal issue into the current treaty negotiations with Panama, which center on questions of sovereignty and administration of the present canal. "Neither the Congress nor the several relevant agencies in the Executive Branch have approved a Sea-level Canal or even seriously considered the matter. The State Department has never been authorized to negotiate for a treaty provision on the Sea-level Canal," they told the President. "It would be premature and reckless to enter a new treaty with Panama that would authorize or permit construction of a Sea-level Canal."

Committed to the p nal use of the ecosphere

TELEGRAM April 8, 1975

The President
The White House
Washington, D.C.

Mr. President:

Recent reports on the State Department's negotiations with Panama concerning the interoceanic canal indicate that a serious environmental issue is involved. The negotiators for the United States are seeking a provision in a new treaty that would grant the United States a long-term option to build a new inter-oceanic Sea-level Canal. The State Department has said: "The United States seeks twenty-five year options: (a) to add a third lane of locks to the present canal and (b) to build a new sea level canal."

Conservation and environmental organizations strongly oppose a Panama Sea-level Canal and regard a treaty provision of this kind as prejudicial to the thorough, rational consideration of the issue. Neither the Congress nor the several relevant agencies in the Executive Branch have approved it or even seriously considered the matter. The State Department has never been authorized to negotiate for a treaty provision on the Sea-level Canal.

There are important reasons for our concern. Marine scientists have repeatedly warned against a Panama Sea-level Canal, on grounds that a canal of this design would eliminate the present freshwater barrier to intermixture of the two distinct ecosystems on either side of the Isthmus of Panama. The result could be tremendous damage to the fish and other marine organisms of both the Atlantic and Pacific Oceans, with consequent impact on the large human populations that depend on the seas in this part of the world.

A National Academy of Sciences Panel on the Sea-level Canal warned of "grave potential dangers" that could result from such a project. The panel said:

> Joining two oceans with a sea-level canal is a gigantic natural experiment. Its consequences are unforeseeable. To forego the relevant biological research prior to and during the construction of a new canal would be like preparing to put a man on the moon and neglecting to ask him to make scientific observations and collect samples. A new canal will affect the animal and plant life of the two oceans, but what these effects are cannot be determined unless the nature of the differences between the biota and ecosystems of the two oceans are first carefully established through years of intensive research.

Advocates of the Sea-level Canal claim there is a technological solution to this problem, but no solution has yet been proposed in sufficient detail to allow evaluation of its effectiveness. All the proponents have to offer is vague promises.

The Panama Sea-level Canal is not even necessary. An alternative modernization project, on which more than $171 million has already been spent by the federal government, would greatly increase the capacity of the present Panama Canal without hazard to marine ecosystems. This project was designed in the Panama Canal organization as a result of World War II experience and was approved by President Franklin D. Roosevelt as a postwar project. It can be carried to completion under provisions of the existing treaties with Panama.

The undersigned organizations believe it would be premature and reckless to enter a new treaty with Panama that would authorize or permit construction of a Sea-level Canal. A Sea-level Canal provision in a treaty would not only prejudice later consideration of the merits of the project, but it would also lead Panama to expect the United States to build a new canal, even though no decision has yet been made on it by this country.

Consequently, we will oppose any treaty with Panama that authorizes or allows the construction of a new Sea-level Canal. We urge you to instruct the Secretary of State to cease all negotiations for a Sea-level Canal provision as part of any treaty with Panama.

signed:

John W. Grandy IV, Executive Vice President, Defenders of Wildlife
Peter Harnik, Coordinator, Environmental Action, Inc.
Brent Blackwelder, Washington Representative, Environmental Policy Center
Douglas W. Scott, Northwest Representative, Federation of Western Outdoor Clubs
David R. Brower, President, Friends of the Earth
Lewis Regenstein, Executive Vice President, The Fund for Animals, Inc.
David S. Claflin, President, International Society for the Protection of Animals
T. Destry Jarvis, Administrative Assistant, National Parks and Conservation Assn.
Stewart M. Brandborg, Executive Director, The Wilderness Society
Godfrey A. Rockefeller, Executive Director, World Wildlife Fund

Senator ALLEN. At this point we welcome Donald M. Dozer, professor of the University of California.

Dr. Dozer, we appreciate your coming this great distance in order to testify before the committee. We are grateful to you. We look forward to hearing your testimony.

TESTIMONY OF DR. DONALD MARQUAND DOZER, PROFESSOR EMERITUS OF LATIN AMERICAN HISTORY AND INTER-AMERICAN RELATIONS, UNIVERSITY OF CALIFORNIA, SANTA BARBARA, CALIF.

Mr. DOZER. Mr. Chairman and members of the subcommittee, my name is Donald Marquand Dozer. I am professor emeritus of Latin American history and inter-American relations at the University of California, Santa Barbara.

I want to indicate that I have been concerned professionally with Latin American affairs for over 35 years. I served in the Department of State for 12 years. In 1944, I entered the State Department's American Republics Analysis and Liaison Division, and then became chief of that division. Later, I worked in the Office of Intelligence and Research, and I was the Department of State's representative to a special intelligence conference in Panama in 1948; and then served as a member of the U.S. delegation to the Ninth International Conference of American States in Bogotá in the same year.

My academic career has been spent at Harvard University, American University, the University of Maryland, the Brookings Institution, and the University of California at Santa Barbara, with numerous sojourns in Latin America.

I have visited the Canal Zone many times. I want to mention also that in 1972 I was honored by being selected as the recipient of the Alberdi-Sarmiento Award from the Argentine newspaper, La Prensa. This award, which has been designated as the Pulitzer Prize of the Americas, has been awarded annually since 1954 to one individual each year who has made distinguished contributions to inter-American friendship. I am the second North American to have received that honor.

The question before the American people and their elected legislators in Washington is whether or not the President has constitutional power to dispossess the United States of territory which has been added to the national domain by purchase authorized and approved by the Congress.

Article IV, section III, clause 2 of the Constitution has been quoted several times here today. May I call your attention particularly to the last clause in that section? "Nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States." The insistence of the Executive upon construing the treatymaking power as blanket authority to prejudice valid treaty-based claims of the United States to the Canal Zone constitutes an insurrection against constitutional government. Any unauthorized action of a president or his executive agents purporting to diminish the national domain under his treatymaking power is an act of executive usurpation.

It is, therefore, ultra vires and must be treated as null and void. If it goes unchallenged to final settlement, it may set a precedent for further dismemberment of the national territory by executive fiat.

Senator ALLEN. At that point, assuming that is correct that such a treaty would be ultra vires after the fait accompli and that Panama would be given control of the canal and the Canal Zone, what could the Congress do to upset that from a practical point of view?

Mr. DOZER. There is nothing the Congress could do without having an actual confrontation with the President over this matter, in my judgment.

Alexander Hamilton made a statement on this point in The Federalist Papers. I think it might be relevant. He explained that the ultra vires action of an executive branch of the Government must be treated as nonoperative, nonoperational.

Senator ALLEN. That is all true, but if the Panamanians had control of the canal, even though the act of the President would be ultra vires, then how could we divest control of the canal from the Panamanians?

Mr. DOZER. What I am saying is intended as a unilateral protest, I mean a protest against the unilateral action of the executive, acting without authorization under the Constitution.

I am not a lawyer, but I have delved deeply into this question.

Senator SCOTT. What was the citation of the Hamilton statement from The Federalist; do you know?

Mr. DOZER. I think that I can find it.

Senator SCOTT. It is sort of nice to know what our early patrons had to say.

Maybe you can give it to me later.

Mr. DOZER. I can supply it later for the record.

Senator ALLEN. That will be fine. Without objection, we will place that response into the record.

I will have to ask you to hit the high spots of your written testimony. Your entire written statement will also be inserted into the record.

Without objection, we will insert your thoughts on Hamilton's statement from The Federalists into the record at this point.

[Mr. Dozer subsequently responded as follows:]

The above remarks are premised on the fundamental fact that the Constitution of the United States does not grant to any one of the three branches of the general government the authority to be the final judge of the powers assigned to it. Such a grant would have made the discretion and self-restraint of each branch and not the Constitution the measure of its authority. All agencies of government are agents of the people and are limited in the exercise of their duties by the powers assigned to them in the Constitution.

It is a well established doctrine of law that an agent must not exceed the authority granted to him. If he nevertheless does so his unauthorized action is *ultra vires*, that is, without legal effect; it is *ipso facto* invalid even in the absence of specific rejection by the principal and remains null and void until and unless it is ratified.

Alexander Hamilton set forth the correct theory of limited delegation of authority among the branches of government when he wrote in *The Federalist*, No. 78, that

"Every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void . . . To deny this would be to affirm that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers may do not only what their powers do not authorize but what they forbid."

Hamilton had already writen in *The Federalist*, No. 33, that acts of the general government or any branch thereof which exceed its constitutional powers are "acts of usurpation and will deserve to be treated as such." He added that in such a case "the people, whose creature it is, must appeal to the standard they have formed, and take such measures to redress the injury done to the Constitution as the exigency may suggest and prudence justify." If, as Jefferson later warned in a letter quoted below, the President's treaty-making power is considered as "boundless, . . . then we have no constitution."

But short of a mass popular protest amounting to quasi-revolutionary action which Hamilton recommended as an ultimate method of restoring constitutional government. Senator Allen asks what can the Congress do from a practical point of view to divest control of the Canal from the Panamanians after the President has pretended to surrender it to them under guise of his treaty-making authority?

After the President has created such a situation there is very little that Congress can do, short of declaring war against Panama, to restore the *status quo ante*. But in order to avoid an unnecessary war the people expect the Senate to refuse to consent to ratification of the *ultra vires* act by the President. They also expect the House of Representatives to refuse to appropriate the funds to pay Panama the amount stipulated in the treaty for the use of the Canal which the American people now own free and clear.

Mr. DOZER. I want to make plain that the treaty we are talking about is not a mere boundary dispute. It is a treaty purporting to give away, permanently, territory acquired in perpetuity, purchased in perpetuity by the United States under authorization of Congress. Any comparisons, then, with the precedents established, let's say, by the Webster-Asburton Treaty with Great Britain over the boundaries of Maine or over the boundaries of the Oregon Territory in the 1840's, are irrelevant in this connection.

There have been several boundary negotiations and treaties signed with Panama, but this is not one of them. This is not a boundary question.

NO HISTORICAL PRECEDENT

There is no precedent in our history for the disposition of territory which has been added to the national domain by purchase. The retrocession of the Canal Zone to Panama, as proposed in the current negotiations, has never been authorized by Congress. Nevertheless, for the past 12 years, Presidents and their diplomatic agents have been negotiating away the valid treaty-based position of the United States in the Canal Zone which Panama granted in perpetuity for the purchase price of $10 million.

Thirty-nine thousand two hundred U.S. citizens live and work in the Canal Zone to operate, maintain, sanitate, and defend the freedom of transit of the Isthmian Canal. These dedicated men and women, some of whose grandfathers built the canal, have made a lifelong contribution to the unblemished record of the United States in honoring its international commitment to keep the canal free and open to the vessels of all nations on terms of equality at charges which are just and equitable.

Where in the constitutionally limited treatymaking power of the Executive can any President find authority for his Secretary of State and ambassadors to betray the human and civil rights of these loyal U.S. citizens and to betray them to the merciless oppression of a Marxist dictator?

These citizens now look to patriotic statesmen in the U.S. Senate to preserve, protect, and defend their human rights, their Anglo-Saxon heritage of the English language, and their common law rights

of habeas corpus, freedom of assembly, freedom of speech, and freedom of religion.

I would like to enter a vigorous dissent to a point made by Senator Hayakawa here today. Actually a great deal of difference is to be found in the examination of the Hay-Herran Treaty with Colombia in 1903, a treaty that was never consummated and the Hay-Bunau-Varilla Treaty which the United States concluded with Panama later that same year.

During the period of the 19th century, in general, great projects, like the Panama Canal, were built under the concession theory. The defeat of the Hay-Herran Treaty by the Colombian Senate in 1903 turned the attention of the United States away from the concession theory. The Hay-Bunau-Varilla Treaty cannot be compared with the Hay-Herran Treaty because it was based upon the need, as expressed in the Spooner Act of 1902, for a sovereign status for the United States in the Canal Zone. That was made explicit in the Spooner law by act of Congress.

After the failure of both the French Panama Canal Company and the American Maritime Canal Company of Nicaragua, the United States turned, then, to the concept of a canal constructed solely within territory under the sovereignty, the full sovereignty of the United States.

In the revolution which produced the Republic of Panama, the United States did not transgress in any way against the people of Panama by giving naval support to their successful independence move. Whatever injury Colombia may have suffered when Theodore Roosevelt took the isthmus was completely satisfied in the Thompson-Urrutia Treaty of 1914–22 with the payment, as mentioned earlier, of $25 million by the United States to Colombia.

THREE BASIC TREATIES

Our situation in the canal is based upon three basic treaties. They form a treaty complex. Full consideration apparently has not been given in the treaty negotiations thus far to the relationship between these three treaties: The Hay-Pauncefote Treaty of 1901 with Great Britain which fixed the terms under which the United States was obliged internationally to operate the canal; the Hay-Bunau-Varilla Treaty of 1903 with Panama; and the Thompson-Urrutia Treaty of 1914–22 which gave Colombia certain privileged rights of use in the Canal Zone.

Those rights assigned to Colombia in the treaty of 1914–22 were not obligations laid onto Panama. They were contractual obligations accepted by the United States vis-a-vis Colombia. If the canal is transferred to Panama, the United States will still be held responsible for the international obligations which it accepted under the Hay-Pauncefote Treaty of 1901 and the Hay-Bunau-Varilla Treaty and the Thompson-Urrutia Treaty with Colombia in 1914.

Senator Scott. Mr. Chairman, if I may interpose, are you saying that a change in the agreement between Panama and the United States would not change our obligation to the rest of the world?

Mr. Dozer. That is exactly right.

I have another point I would like to make. Like all of our other treaties of territorial purchase; namely, the Louisiana Purchase

Treaty of 1803, the Florida Purchase Treaty of 1819, the Gadsden Purchase Treaty of 1853, and the Alaska Purchase Treaty of 1867, the treaty of 1903 with Panama contained no provision for renegotiation and no terminal date. These were all treaties by which the United States purchased foreign territory. They were considered, therefore, to be final and unnegotiable.

Under the 1903 treaty with Panama, the position of the United States in the zone was not that of a mere concessionaire enjoying certain privileges. That was the character of the previous Hay-Herran Treaty with Colombia which never went into effect.

What can be more final and more conclusive in establishing the fact of sovereignty than a grant in perpetuity of all the rights—and I quote from the treaty of 1903—all the rights, power, and authority of sovereignty "to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power, or authority"?

When the United States paid the full purchase price of $10 million for the Canal Zone, it extinguished for all time any claim for retrocession of the territory to a former sovereign. This matter of sovereignty has to be established and has to be understood as the fundamental issue in this present case.

I don't want to take too much time, but the counterarguments are based upon very flimsy evidence. The argument has been made that in the treaty of 1936, which we concluded with Panama, the phrase territory of the Republic of Panama under the jurisdiction of the United States was inserted in one of the articles. It is argued by the State Department that the use of this phrase was intended to define the entire Canal Zone. But this is a substantial misunderstanding of the text of the treaty.

There has been no modification of articles 2 and 3 of the basic treaty of 1903 in any subsequent treaty that we have concluded with Panama. Neither the treaty of 1936 nor the treaty of 1955 made any alteration in this position of the sovereign status of the United States in the Canal Zone.

U.S. INVESTMENT NEARLY $7 BILLION

Panama has never made any investment in the Canal Zone, in the Panama Railroad or in the canal. The United States, however, not only paid Panama $10 million as a full purchase price, but it also purchased the land with all rights and titles from the private owners; and the U.S. Government now owns all the land in the Canal Zone, not only by territorial cession from Panama but by purchase of ownership in fee simple. The present total U.S. investment in the Canal Zone, the interoceanic canal, the towns, the hospitals, the water and sewage systems, the schools, other public buildings, our defense bases there—all of this amounts to nearly $7 billion. To this territory and property, Panama has absolutely no reversionary interest in justice, law, or treaty.

U.S. SOVEREIGNTY RECOGNIZED

The question of the Supreme Court decisions on the matter of sovereignty have been pretty well discussed by previous speakers. I will simply allude to the fact here, in the interest of saving time.

Panama was very grateful for the treaty of 1903 which established the fact that the canal would be built by the United States in territory adjoining the Republic of Panama and not in the Nicaraguan route. The Panamanian executive, legislature, and the courts immediately proceeded to recognize the permanent cession of the Canal Zone to the United States.

Similarly, the United States, when the question was raised before the Supreme Court in 1907, handed down an official decision that the Canal Zone was constitutionally acquired territory of the United States.

The leading case here is the case of *Wilson* v. *Shaw* in 1907.

Now, a countertheory of an inconclusive sovereignty by the United States over the Canal Zone was advanced by William Howard Taft, Secretary of War, in 1905. On a visit to the Canal Zone he exclaimed in a speech that Panama still possessed titular sovereignty over the Canal Zone.

This concept has no standing in international law, and Taft himself failed to press this concept. In 1930 when Taft was Chief Justice of the United States, he handed down the decision of the Court in the *Luckenbach Steamship Company* v. *United States*. He referred to the phrase "titular sovereignty" as applying possibly to the Canal Zone and refused to endorse it. There have been no other cases that I have been able to find where this phrase has been invoked.

I may say that the decision in *Wilson* v. *Shaw* was reaffirmed by our Supreme Court as recently as 1972 when the Supreme Court denied certiorari in a decision that had been handed down by the fifth circuit court of appeals upholding the decision in *Wilson* v. *Shaw*. In other words, the legislature of the United States, the executive, and the Supreme Court of the United States and the legislative, executive, and judicial authorities of Panama have all agreed that the action of 1903 was a cession of sovereignty from Panama to the United States. This fact, I think, must be recognized.

With contempt for the rulings of the Supreme Court and in defiance of the Congress, recent U.S. Presidents and Secretaries of State have consistently violated the prohibition against fraud and false statement in a Government matter. Their arguments are a tissue of sophistries and lies.

As I explain in my written testimony, they misread the treaty of 1936 and have tended to fall back on this theory of "titular sovereignty" which has no standing in international law.

We read in the newspapers that Panama is now demanding that we give them not only the territory of the Canal Zone and the interoceanic canal but also an immediate payment of $1 billion upon exchange of ratification of a new treaty, annual payments of $130 million for use of the Canal, and $20 million for rental of the bases. These payments will continue until the termination of the new treaty on December 31, 1999. The American people find it very difficult to understand why under a new treaty we should be committed to paying a total of some $5 billion for the use of the Canal and for rental of military bases and territory which we now own free and clear.

This explains why, when the treaty issue was debated on nationwide television, the sponsors of "The Advocates" program received votes

from more than 12,000 U.S. citizens of whom 86 percent voted in favor of the existing treaty and only 14 percent in favor of a new treaty.

More recent public opinion polls show that the American people oppose a new treaty by majorities of five to one. In some congressional districts, support of the 1903 treaty runs as high as 93 percent. This was reflected in the 1976 elections by the defeat of President Ford, Senator Gale McGee, and other elected officeholders who failed to appreciate that the voters are determined to defend and maintain U.S. sovereign control over the Canal Zone in perpetuity.

The reconsideration of our relationship with Panama really started when Milton Eisenhower made a swing around Latin America at the request of his brother, the President, in 1958. As Eisenhower explains in his book, "The Wine is Bitter," he raised doubts as to "whether a treaty guarantee of rights in perpetuity can be sustained." He also proposed a revision of the accounting procedure by the Panama Canal Co. in order to amortize the costs of digging and constructing the canal. The United States had never been able, up to that point, to amortize the costs of the actual construction of the canal.

Under Eisenhower's suggested new accounting procedure, the Canal Zone authorities since 1965 have been trying to discount or make allowance for those construction costs. That has resulted in an apparent loss of income by the canal. The new accounting procedure, however, does not recover the enormous investment of the United States in the property in the zone.

PANAMANIAN FLAG

Milton Eisenhower was able to persuade the executive bureaucracy to recommend to President Eisenhower that he recognized the titular sovereignty of Panama over the zone by authorizing the flying of the flag of Panama alongside the flag of the United States at Shaler Triangle in the Canal Zone. This resulted in nationalistic demonstrations in Panama and led to the opening of negotiations authorized by President Johnson in 1965. Those negotiations have been continuing from 1965, with a few interruptions, to the present.

President Johnson, in his agreement with President Robles, stated that, "The discussions of a new treaty would effectively recognize Panama's sovereignty over the area of the present Canal Zone." The negotiations, every since, have been proceeding on that basis. They were confirmed and expanded in the Kissinger-Tack agreement of 1974.

These putative betrayals of national territory, initiated and sustained only by the executive bureaucracy, were not commitments by the United States. Both the Congress and the Supreme Court of the United States have officially recognized the sovereign position of the United States in the zone.

The executive, on the other hand, since the late 1950's, has either failed to recognize or has unilaterally and repeatedly repudiated this position of the U.S. Government. When Secretary of State Cyrus Vance, therefore, commented a few weeks ago in connection with the Kissinger-Tack "Statement of Principles" of February 7, 1974, he declared that, "The United States cannot renege on its commitments."

He erred substantially. An unauthorized statement such as the Kissinger-Tack agreement certainly does not represent a commitment by the United States.

Viewed in retrospect the foregoing chain of events appears to accord with a prearranged plan to circumvent the separation of powers established by the Constitution of the United States. This is confirmed by the recommendation of the Linowitz Commission that the executive present the Congress with a fait accompli, leaving the Senate with no alternative except to consent to a new treaty.

CIVIL RIGHTS OF U.S. CITIZENS

As a result, the United States citizens, who reside in the zone and who maintain and operate the canal, are threatened with loss of their jobs and their homes and are being betrayed by their government. They are being replaced in their jobs by Panamanians. The Foreign Minister of Panama, Gonzalez-Revilla, recently told Governor Meldrin Thompson that the homes of U.S. employees in the zone will be turned over to Panamanian workers, and their present occupants will be relegated to less desirable housing in the Republic of Panama.

Already the Panamanian National Guard is preparing to take over the places of our security officers in the Canal Zone. You will hear from one of those officers later this morning. United States control in the zone, as reported by the Governor of the Canal Zone in a secret meeting with his department heads, will be phased out in 6 months or less, not the 3 years stipulated in the draft treaty.

The zonians consequently are petitioning now for a redress of grievances and for admission to the Union as a State by joint resolution of the two houses of Congress in order to assure the protection of their rights and to mandate the President to defend those rights against invasion as provided by article IV, section 4 of the Constitution.

As mentioned earlier by Senator Hatch, early in the Eisenhower administration the Soviet Union officially challenged the validity of the Alaska Purchase of 1867. Admission of Alaska to the Union as a new State ended that controversy. U.S. citizens in the Canal Zone have concluded that now is the time to do the same for the zone. To this solution the United States is already committed by article 73 of the Charter of the United Nations.

Enactment of a joint resolution to incorporate the Canal Zone in the Union as a new State would restrain Soviet imperialism in the Caribbean. It supports our historic policy of the Monroe Doctrine for the defense of the American hemisphere, continues the policy established by Congress in the Northwest Ordinance of 1787 to admit new States to the Union on a footing of equality with the original States, and follows the precedent of the Joint Resolution of 1845 for annexing Texas to the United States. It would preserve the constitutional and human rights of 39,200 U.S. citizens in the Canal Zone who now suffer from taxation without representation.

The negotiations over the past 12 years have been the reaction of the executive branch alone to the tantrums, blackmail demands, and riots staged by successive Panamanian Governments for nearly 20 years.

From the beginning, these negotiations have lacked the quality of diplomatic bargaining based upon give and take, for U.S. officials have furnished the Panamanians with all the arguments needed to support their case and have given away their own points. Their diplomacy has forfeited respect for the United States among the nations.

I mentioned earlier that, as a recipient of the Alberdi-Sarmiento Award, I have been concerned through the years for the improvement of inter-American relations. My creed has been the Good Neighbor policy. The policy of the Good Neighbor was stated in classic form by President Roosevelt. President Franklin Roosevelt, in 1933 when he dedicated "this Nation to the policy of the good neighbor—the neighbor who resolutely respects himself and because he does so, respects the rights of others."

Senator SCOTT. Professor Dozen, may I interrupt briefly?

We will be having a live quorum in 10 minutes. We have to be on the Senate floor to vote on a cloture resolution at 11:45.

I am very grateful for your scholarly presentation. I know of your deep interest in this matter. I know of the fact that you have written on this matter.

In view of the time element could you conclude your remarks and give us the opportunity to pose a couple of questions.

We have to be on the floor prior to 11:45.

Mr. DOZER. Certainly.

To restore good relations not only with Panama but with other nations of Latin America, the United States must, first of all, reestablish its own self-respect as a basis for winning the respect of others. This demands that we reassert our treaty rights to the Canal Zone and the Panama Canal. We must defend them as indispensable economic, geopolitical, and military assets. Then Congress will be in a position to appropriate public funds for completion of the authorized third locks in accordance with the approved terminal lake plan. This will provide for transit of larger bulk carriers urgently needed to move Alaskan oil to gulf coast and east coast refineries.

When we allow the President to surrender control over national territory and let it pass into the hands of foreign powers, we are contributing to a process of national suicide and international instability which serves the interests of those foreign powers. Persistence by a President in such a course may render him liable to impeachment.

I thank you very much. I will be glad to try to answer questions.

I would like to submit with my statement two articles that I have written on the subject. One is "Panama Canal in Danger" and the other is "Panama Canal Series—Questions and Answers."

Senator ALLEN. Thank you very much, Dr. Dozer.

Those articles will be inserted in the record without objection.

[The material follows:]

PANAMA CANAL IN DANGER

(By Donald Marquand Dozer, University of California, Santa Barbara, 1976)

Can we save the Panama Canal?

Should we save the Panama Canal?

These questions have assumed crucial importance in the past fifteen years when persistent efforts have been made by Washington policy makers to surren-

der this indispensable strategic and commercial facility crossing the isthmus of Central America. In this as in other cases, policy makers have intervened in otherwise satisfactory situations to overturn successful, long-tested policies, thus creating crises and keeping the nation in a continuous and non-productive state of tension. In these efforts to repudiate the responsibility of the United States for maintaining, operating, sanitating, and defending the canal and its protective frame of the Canal Zone, Presidents and Secretaries of State have acted without Congressional authorization, have usurped powers in violation of constitutional limitations, have seriously confused the issues, have forfeited the respect and trust of the Latin American countries in this nation, and have weakened the defensive strength of the United States in a hostile world.

The United States owns the canal

The United States has a secure legal position as sovereign over the Canal Zone. Convinced in the opening years of this twentieth century that the land mass of the Central American isthmus must be breached in the interest of world maritime commerce and hemispheric defense the Congress in Washington and the Theodore Roosevelt administration collaborated in treaty negotiations with Great Britain and the new Republic of Panama which resulted in a grant by Panama to the United States of complete and exclusive sovereignty "in perpetuity" over the territory of the Canal Zone "to the entire exclusion of the exercise" of sovereignty by Panama. The Hay-Bunau Varilla treaty of 1903 between the United States and Panama which authorized this transfer was constitutionally ratified by both governments and was, along with all the other acts of the provisional government of Panama, confirmed in the following year by the new constitutional government of that country.

Under this treaty the United States immediately consummated the purchase and discharged Panama's sovereignty over the zone in perpetuity by paying the full purchase price of $10 million. In addition the United States, in accordance with Article VI of the treaty, acquired all the privately owned land and property in the Canal Zone in what would be called in domestic law "title in fee simple" by purchasing it from the individual owners, including those who had only squatters' claims to it. The payment of the purchase price of $10 million gave the United States the full rights of sovereignty in perpetuity over the Zone, and the purchase of the land and property in the Canal Zone made the United States its sole owner. Soon thereafter all branches of the Panamanian government—the executive, legislative, and judicial—took action in which they recognized that Panama had ceded Panama's territory to the United States.

The fact that the 1903 treaty contained no provision for its termination confirms the perpetual nature of the territorial cession. In a letter of October 24, 1904, which Secretary Hay addressed to the Minister of Panama in Washington, J. D. de Obaldia, he showed with complete finality that the United States had acquired by the purchase treaty of 1903 a sovereign position in perpetuity over the Canal Zone. He proved it not only by the textual wording of the treaty but also by the actions already taken by the legislature, the executive, and the courts of Panama pursuant to the treaty (United States, *Foreign Relations*, 1904, pp. 613–630.) When questions were raised about it the United States Supreme Court in Washington declared in the case of *Wilson versus Shaw* in 1907 "Title to what may be called the isthmian or canal zone which at the date of the [Spooner] act was in the Republic of Colombia, passed by an act of secession of the newly formed Republic of Panama. The latter was recognized by the President. A treaty with it ceding the Canal Zone was duly ratified." (204 U.S. 24).

Official territory of United States

This decision, which recognized the Canal Zone as official territory of the United States, has never been overruled but was reaffirmed by the Supreme Court as recently as 1972 in *United States versus Husband R.* (406 U.S. 395—1972). It consequently remains the leading case fixing the official status of the Canal Zone. Meanwhile, subsequent treaties which the United States concluded with Panama in 1936 and 1955 have made no change in these articles of the treaty of 1903 to which the Supreme Court's decision referred. No new legal or treaty basis has been established for any changes in the status of the Canal Zone and Congress has repeatedly rejected proposals that would authorize such changes.

Guilt complex promoted

The historical circumstances of the revolution of 1903 which brought the new nation, Panama, into existence have been distorted and used to reflect unfavorably upon the Roosevelt administration and to create unjustifiably a guilt complex among the citizens of this country. In fact the Roosevelt administration played no part in the planning or equipping of that revolution. The Panama independence movement of 1903 was planned by the Panamanians and financed by the former Engineer of France, Philippe Bunau-Varilla and others. The United States took no overt step to give military assistance to the Panamanian patriots who assisted him. When Colombian troops landed in Panama to suppress the uprising the United States warships which were anchored at the Caribbean side of the Isthmus made no attempt to interfere. The provisional government of Panama, however, ordered the private Panama Railroad not to transport the Colombian troops across the Isthmus to the seat of the government. United States troops were landed only when the revolution was almost complete and then only for the purpose of protecting the women and children of American citizens and the security of transit. Commander Hubbard, with the support of only 42 bluejackets successfully negotiated the return to Colombia of 474 troops without firing a shot. As soon as the Colombian troops withdrew Commander Hubbard re-embarked his crewmen and took no part in any military action.

Corrupted news media

Roosevelt's political enemies, abetted by dishonest and incompetent historians and by corrupted news media, have perpetrated the error that the conveyance of the territory of the Canal Zone to the United States was only a rental or lease arrangement despite the clear phraseology of the treaty of 1903. In the negotiation of that treaty Secretary of State John Hay requested that the Panamanian Envoy Extraordinary and Minister Plenipotentiary, Bunau-Varilla, replace the word *lease* in the draft treaty with the word *grant*. In the treaty as ratified therefore the word *lease* nowhere occurs with reference to the Canal Zone, but in every article involving the transfer some form of the word *grant* is used and in the Spanish version various forms of the equivalent verb *conceder*. In fact neither in the treaty of 1903 nor in any subsequent treaty concluded between the United States and Panama are the words *rental* or *lease* or any form of these words used to define the status of the United States in the Canal Zone.

It follows that the sovereign position of the United States in the Canal Zone is legally so firmly fixed as to be entirely non-negotiable.

Canal owned by Unted States—not leased

The continuing argument for a leasehold status of the Zone rests entirely upon the misunderstanding and spurious use of article XIV in the treaty of 1903 in which the United States agreed to pay Panama an annuity of $250,000 in gold coin starting nine years after the signing of the treaty, that is, at a time when the Canal was scheduled to be opened to world commerce. But a study of the history of the negotiations of 1903 shows that Bunau-Varilla, in an effort to resolve a deadlock, persuaded Secretary Hay to assume the annual franchise payment of $250,000 which the Panama Railroad formerly paid to Colombia. It had no relationship to the status of the Canal Zone but was the obligation of the Railroad to Colombia which was now assumed by the United States. This annual payment to Panama did not impose any limitation upon the sovereign status of the United States in the Canal Zone nór upon the ownership by the United States of the land of the Canal Zone. Let us therefore hear no more of the fallacious argument that the United States only leases or rents the Canal Zone. It has been used to weaken the position of the United States not only in defending its rights against Communist-instigated Panamanian nationalists but throughout Latin America and in the United Nations.

What can be more final and more conclusive at law than a grant in perpetuity of sovereign rights over a piece of territory by the rightful owner to the entire exclusion of the future exercise of his rights of sovereignty, to a purchaser who immediately pays the full purchase price?

The treaty revision of 1936 increased the annuity to 430,000 balboas to compensate Panama for the devaluation of the United States gold dollar by the Franklin D. Roosevelt administration. The exchange of ratifications of the new treaty in 1939 extinguished the gold obligation of the United States. This annuity was further increased in the 1955 treaty by 1.5 million balboas, but this addition was not

made an obligation of the Panama Canal Company but is paid out of the State Department appropriation. In return the United States was granted a 15-year lease on the Rio Hato airbase in Panama. At the expiration of the lease in 1970 General Omar Torrijos and his National Guardsmen repossessed the Rio Hato base, but the annuity of 1.5 million balboas continues to be paid to Panama as a gratuity.

The flying of the flag is an exercise of one of the highest acts of sovereign authority. Yet, despite Panama's disclaimer of the exercise of sovereignty over the Canal Zone in perpetuity in the treaty of 1903, President Eisenhower ordered the governor of the Canal Zone to fly the flag of Panama over the United States territory in 1960. The president took this action in defiance of Congress which had stipulated earlier in that year that no funds appropriated to the Departments of State, Commerce, and Justice should be spent for that purpose.

President Kennedy went still further in denying a solemn treaty commitment in the Canal Zone when in his conversations in the White House with President Roberto Chiari of Panama he erroneously assured him three times that the United States did not claim sovereignty over the Canal Zone. He gave substance to this disclaimer by authorizing the flying of the Panamanian flag at several additional sites in the United States Zone. Excitable Panamanian nationalists, led by Castro-inspired students and by communist agitators and encouraged by the express disclaimers of sovereignty by the White House, accordingly invaded the Zone in January 1964 to hoist their flag as a symbol of Panamanian sovereignty. After the ensuing riots, which were accompanied with the loss of lives and property, Kennedy's successor, President Johnson reiterated the historic policy of the United States by declaring: "The United States cannot allow the security of the Panama Canal to be imperiled. We have a recognized obligation to operate the canal efficiently and securely, and we intend to honor that obligation in the interests of all who depend on it".

Those "who depend on it," President Johnson might have added, include all the maritime nations of the world whose merchant and naval vessels transit the canal, and among these Panama and her neighbor nations in Latin America are among the most dependent, as shown by the following statistics of Panama Canal users in the fiscal year 1969 and the percent of each country's oceanborne trade which uses the Canal:

	Percent
Chile	39.6
Peru	39.0
Ecuador	72.4
El Salvador	68.1
Nicaragua	55.1
Costa Rica	30.9
Guatemala	30.9
Colombia	22.2
Honduras	13.6
Panama	[1] 11.5

[1] (House of Representatives, 92d Cong., Committee on Merchant Marine and Fisheries, Hearings before the Subcommittee on Panama Canal, *Panama Canal Treaty Negotiations*, November, 1971-August 1972, Serial No. 92–30, Committee Print, page 8.) As for use by the United States, 70 per cent of the cargo tonnage transiting the canal either originates in or is destined for the United States; this tonnage represents 16 per cent of the oceanborne commerce of this country.

Reversed position

President Johnson, after thus reaffirming the historic policy of the United States toward the Canal Zone in January 1964, later reversed his position on the continued sovereignty of the United States over and defense of the Canal Zone, and in September 1965 he committed his administration to the old and discredited dream of a sea-level canal. In this he was encouraged by those who would benefit from such a project, who were fascinated by the challenge of digging in a new ditch across the isthmus at sea level, and by manufacturers of heavy earth-moving equipment in the United States. President Johnson was reliably alleged to own stock in one of these Texas companies. In the sea-level project of the president State Department officials saw an opportunity to return the existing Canal and Canal Zone to Panama and to negotiate a new canal treaty with that country.

Accordingly, in a joint statement which Johnson issued with President Marco Robles of Panama he announced that the United States would abrogate the treaty of 1903, that the new treaty would "effectively recognize Panama's sovereignty" over the area of the Canal Zone, and that it would terminate on the opening of a sea-level canal. This renunciation by the President of the sovereign position of the United States in the Canal Zone was made without authorization of Congress or consent of the Senate, whose approval would be required for ratification of a new treaty. By this unlateral executive act Johnson undertook to abdicate the obligations of the United States under the Hay-Pauncefote treaty of 1901 between the United States and Great Britain, under the Hay-Bunau Varilla treaty of 1903 and subsequent treaties with Panama, and under the treaty of 1914–1922 with Colombia, and also to overrule by executive fiat the decision of the Supreme Court affirming the sovereign rights of the United States in the Canal Zone. Johnson thereupon proceeded to initiate negotiations with Panama which would give the United States the authority to construct a sea-level canal through Panama outside the zone and would surrender to Panama the present canal upon completion of the new sea-level facility.

Usurpation of authority

Thus in the matter of the United States Canal Zone in Central America the pattern of a unilateral presidential usurpation of authority to dispose of United States territory and property without regard to constitutional limitations was established by President Johnson. It is believed that no president had previously asserted or acted upon any such claim of persidential prerogative to give away territory which had been added to the United States by purchase. This was an unprecedented presidential action which nevertheless, despite Congressional warnings, has been persisted in by his successors in the White House and by the State Department bureaucracy to the present, thus setting a precedent which jeopardizes other territorial purchases of the United States.

A sea level canal across the isthmus of Central America has repeatedly been shown to be inferior from a navigational viewpoint, because of the large differential in tidal range on the two sides of the isthmus which would cause a recurrent wash through a sea-level channel with a water velocity of as much as seven knots. Moreover the construction of a sea-level channel, some 85 feet below the summit level of the existing canal, would present far more serious problems of slides because of heavy rainfall and the swampy and unstable character of the Panama terrain and would in any case require tidal locks to control the four-times daily tidal currents. The costs of constructing such a sea-level channel, which was the design of the French Canal Company under Ferdinand de Lesseps after 1879, bankrupted that company in 1889. Moreover, it is apprehended that the opening of a salt-water channel between the Pacific Ocean and the Caribbean Sea would allow the migration of marine life which would be harmful to shrimping and other commercial maritime operations, especially in the Caribbean area, and would seriously disturb the ecology of that region by infesting it with the poisonous yellow-bellied Pacific sea snake.

Attempt to waive United States sovereignty

President Johnson's attempted waiver of United States sovereignty over the Canal Zone can only be pronounced an *ultra vires* act, not warranted by the Constitution nor authorized by Congress. The Constitution delegates to the president the "Power, by and with the Advice and Consent of the Senate, to make Treaties," but this cannot include the power to give away territory of the United States, for the Constitution assigns to Congress and to Congress alone the "Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States".

The State Department takes the view that this power of Congress does not exclude concurrent action by the president under his treaty power "when the subject matter is appropriate for international negotiation." [1]

But the status of the Canal Zone is not a "matter which is appropriate for international negotiation," for the Canal Zone has been declared by the United States Supreme Court and other United States courts, upon the basis of the treaties of 1903 and 1936 and of legal actions by both Panama and the United

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[1] (Statement Carl F. Salans, Deputy Legal Adviser, Department of State, House of Representatives, Committee on Merchant Marine and Fisheries Hearings, *Panama Canal Treaty Negotiations*, November 1971-August 1972, Serial No. 92–30, Government Printing Office, Washington, D.C., 1972, pp. 14–15.)

States pursuant to these treaties, to be an "unincorporated territory of the United States" over which "Congress has complete and plenary authority." (*U.S. vs. Husband, R.*, 1453 F. 2d 1954 (1971) and 406 U.S. 935 (1972).) Questions involving the status of the Canal Zone therefore lie outside the purview of the president's power under the treaty clause of the Constitution. The State Department's effort to give him this power in the case of the Canal Zone by citing as precedents treaties which were negotiated under the authority of the president with Great Britain, Spain, and Mexico ceding rights to land claimed by the United States is irrelevant, because the Canal Zone is not a territory which is merely claimed by the United States; it is a territory recognized by both Panamanian law and the United States Supreme Court as land ceded to the United States in perpetuity and governed as territory of the United States. A president, if acting in pursuance to the Constitution, cannot make treaties on subjects which are constitutionally denied to him or which lie within an area which he may not enter.

Since President Johnson had determined that in spite of the constitutional limitations imposed upon the executive authority the non-negotiable was still negotiable and since he had purportedly surrendered at the outset the trump card in the negotiations, namely the United States treaty-based position of sovereignty over the Canal Zone, and since he has thus supplied the Panamanians with the only negotiating position that they had, the president's ambassadors could salvage little for the United States from these negotiations, and the three draft treaties which they finally concluded with Panama proved unacceptable to both governments and were formally rejected by Panama.

Panama dominated by Marxist revolutionary government

The executive authority of the United States and its agents in the State Department bureaucracy had maneuvered the United States into an unprecedented position of weakness in relation to both Panama, which by this time had come under the domination of a Marxist revolutionary government, and the world communist movement, which had had the acquisition of the Canal Zone as its target ever since Lenin announced the aims of that movement in Moscow in 1917. Viewed in retrospect the aforementioned chain of events appears to conform to a preconceived plan and savors of a conspiracy against the freedom of the American people and the independence of the United States. Henceforth the United States could and would be represented as a mere interloper or squatter in the Canal Zone and would find it increasingly difficult to defend its continued presence there against the aggressive designs of the Torrijos regime. Colonel, later General Torrijos, has made repeated threats of invading the Zone and wresting it from the United States with his National Guard of 6,000 men. He not only has done nothing to prevent but on the contrary has encouraged the development of mob action against the United States. The echoing of these threats by the diplomatic representatives of the United States in the new negotiations opened up by President Nixon and Secretary of State Henry Kissinger tended also to encourage that very action and suggest collusion between them and the Panamanian authorities.

As Panama can find no support in the Hay-Bunau Varilla treaty or in any subsequent treaty concluded with the United States she counts upon Eisenhower's concession to her of flying the Panamanian flag in the Zone as a symbol of Panamanian sovereignty and upon the false statements of renunciation of sovereignty by Presidents Kennedy and Johnson and by spokesman for the Nixon and Ford administrations. In their determination to retrocede the Canal Zone to Panama these irresponsible and subversive officials in the State Department have made false statements tending to weaken the sovereign position of the United States in the Canal Zone and manifesting an unlawful conflict of interests. *Inter alia*, they have referred to the "myth of American sovereignty" over the Zone, have persistently called the Zone a leased area, have assured the Panamanians that the "Canal Zone is . . . territory of the Republic of Panama under the jurisdiction of the United States of America," and have repeatedly declared that "nothing in the 1903 treaty or its amendments indicates that Panama ever ceded the Canal Zone to the United States".

Out of context

In their efforts to prove their unprovable allegations they have even quoted treaty clauses out of context, as for example, the preamble statement in the treaty of 1903 as to "the sovereignty of such territory [the Canal Zone] being

actually vested in the Republic of Panama," and the various references to "territory of the Republic of Panama under the jurisdiction of the United States of America" in Article III of the treaty of 1936, which they erroneously equate with the Canal Zone. In the former case the preamble clause certifies Panama's sovereignty over the Canal Zone for the purpose of attesting her authority to cede it to the United States. In the latter the reference to the "territory of the Republic of Panama under the jurisdiction of the United States of America" refers only to that section of Panamanian territory in the city of Colón formerly under the jurisdiction of the United States and known as "New Cristóbal," which was returned to the jurisdiction of the Republic of Panama later by the treaty of 1955. It does not in any way refer to or affect the status of the Canal Zone, and to prevent any such inference Article XI of the same treaty stipulates that nothing in the treaty shall "affect the rights and obligations" of either contracting party nor "be considered as a limitation, definition, restriction or restrictive interpretation of such rights and obligations."

These and other false statements made by officials of the State Department render them liable to possible prosecution under Title 18, Sections 1001–1002 of the United States Criminal Code, and to punishment by fines of $5,000 and five years in prison.

State Department officials seek to justify the abrogation of the treaty of 1903 with the plea that that treaty was concluded 72 years ago and that in the meantime conditions have changed. Will they also insist as a corollary that the older the treaty of cession the greater is the need for renegotiating it? Is a period of 72 years the minimal or the maximal terminal date for territorial cessions? In the early 1950's Soviet Russia addressed a demand to the State Department to show proof of ownership of Alaska, which the United States had purchased from Russia some 85 years before. It may well be that only the later admission of the territory of Alaska into the Union as a state forestalled further demands along this line for the time being. Or will the State Department insist upon the renegotiation of the Gadsden purchase and return all of southern Arizona and southern New Mexico to Mexico because the Gadsden purchase treaty was concluded 122 years ago and since then conditions have changed. And what about the Florida purchase treaty which is 158 years old and the Louisiana purchase which occurred 172 years ago? As a matter of fact, the Panama Canal is not operated solely under the 1903 treaty but under that treaty as modified and reaffirmed in the treaties of 1936 and 1955.

In their zeal to catch up with modern times the negotiators of the present surrender of the Canal Zone are not deterred in the slightest by the fact that by including defense expenditures the United States has spent from 1904 through June 30, 1974 a total of $6,880,730,000 on the Panama Canal enterprise, much of it in Panama. Moreover, the claim that changed conditions justify the renegotiation of old treaties involving cessions of territory is a petard charged with dynamite which can create world-wide conditions of instability and lay the bases for many future conflicts.

The wisest advice was given by nine members of the Senate Armed Services Committee in a letter to President Nixon on February 19, 1973, as follows: "In a long range, we must . . . work with Panama to help her understand that the best guarantee of her sovereignty, security, prosperity, and nationhood lies in maintaining the historic grant of sovereignty to the United States in the Canal Zone." President Nixon nevertheless reopened the negotiations with Panama in 1973 and entrusted them to Ellsworth Bunker despite warnings to him by several influential senators and representatives of both political parties that the sovereignty of the United States over the Canal Zone was non-negotiable. As a basis for these negotiations Secretary Kissinger issued a Joint Statement of Principle with Panama's foreign minister, Juan Antonio Tack, on February 7, 1974, in which he agreed that the United States will abrogate the treaty of 1903 thus relinquishing its sovereignty over the Zone and will return "the Panamanian territory in which the canal is situated . . . to the jurisdiction of the Republic of Panama." The United States would thus continue in the Zone as a mere concessionaire at the sufferance of Panama and responsible to Panama for the operation and defense of the Canal.

The answer by the Congress in Washington to these unauthorized and unconstitutional commitments was a declaration signed by 38 senators that they would not consent to the ratification of any treaty with Panama which diluted United

States sovereign control over the Canal and the Canal Zone and the passage by the House of Representatives by a vote of 246 to 164 of an amendment to the appropriation bill for the Departments of State, Justice, and Commerce stipulating that none of the funds appropriated in the bill "shall be used for the purposes of negotiating the surrender or relinquishment of any United States rights in the Panama Canal Zone." [2]

Large concessions already made

The large concessions which the Department of State has already made to Panama, including the all-important issue of sovereignty, have been made not in response to legal or humanitarian arguments but under threats by Panamanian officials and negotiators and their warnings of dire consequences including reprisals against United States business firms. The repetition of Panama's threats against the United States by the United States negotiators as an excuse to justify their give-away actions raises questions as to whose interests they actually represent. The negotiations between the United States and Panama have assumed the character of blackmail threats by Panama which have been affirmed and reaffirmed by spokesmen for the United States who predict "another Vietnam" if the United States does not yield.

The United States has made an honorable record in operating the canal as an international public utility at minimal charges and no financial profit to itself. In its operation it has faithfully fulfilled its international treaty obligations on behalf of the oceanborne commerce of the world. The very success of the United States in building and operating the Canal and in developing the Canal Zone, when contrasted with the conditions of underdevelopment in the Republic of Panama, has filled Panamanian demagogues with envy which has driven them to covet their neighbor's canal and canal zone. There would be no Canal problem today if these politicians would follow the commandment "Thou shalt not covet thy neighbor's Canal Zone, his Canal, or anything that is thy neighbor's."

Panama's objective is to use the Canal for the purpose of exploiting world commerce for her own unjust enrichment. It can easily be anticipated that with the removal of the United States authority Panama will again become a focus of international rivalry as it was for many centuries before the United States brought law and order there. With the canal in the weak hands of Panama will the United States undertake to protect it against the reassertion of Colombian sovereignty over the isthmus? And will it resist the aggressive designs of a mounting Soviet naval threat directed toward extending its tyranny over all the strategic sea lanes that are essential to a world of free nations?

With Panama or some other foreign nation as sovereign over the Canal Zone the heaviest users of the Canal will be the heaviest losers. These include the United States, the United Kingdom, Norway, Japan, and the nations of Latin America which are listed above. The period which Panama proposes to allow to the United States to operate and control the Zone has been tentatively reduced to three years in the current negotiations. For the United States, according to a Department of Commerce report in May, 1974, the closing of the Canal for whatever reason, following a change in the status of the Zone, will mean:

A 71 per cent increase in the average annual consumption of fuel by carriers of U.S. foreign trade;

A 31-day increase in average shipping time;

A $932 million increase in the yearly total delivered price of all exports, which would price our farm products out of Pacific markets; and

A $583 million increase in the yearly total delivered price of all imports including $78 million for intercoastal deliveries, thus adding to U.S. inflation. (Department of Commerce, "The Panama Canal in U.S. Foreign Trade," dated May 15, 1975.)

Panama's case has been supported by political leaders of several Latin American governments, even by governments of nations which have a large commercial stake in the continued safe and expeditious transit of the Canal by their merchant vessels under the protection of the United States. This situation, unfortunate both for them and for the United States, results in large measure from the

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[2] (Congressional Record, House Journal, June 26, 1975. The House of Representatives later accepted by a vote of 212 to 201 a modified amendment worded to "protect the vital interests of the United States in the Canal Zone and in the operation, maintenance, property, and defense of the Panama Canal.")

unwise policies which have been pursued by the United States toward these nations throughout the post-World War II period. Policies of controlled grants and loans which have left Latin American countries with heavy burdens of debt, programs of social revolution imposed upon these countries, and covert attempts at overturning governments and even assassinating national leaders have embittered inter-American relations. The sympathy of these nations for Panama on the Canal issue is an anti-United States maneuver which, if it succeeds, as it already bids fair to do, will seriously jeopardize their maritime traffic and impose hardships upon their economies. These governments, in a common commitment to a socialist-communist future for Latin America, make common cause with Torrijos, Fidel Castro, and even Soviet Russia and Communist China to weaken and ultimately destroy the United States.

The process of enabling the Canal to meet changing modern requirements has kept pace with the use of the canal, but most of the remaining problems of major modernization can be overcome by the adoption of the Terminal Lake-Third Locks plan. The bottlenecks in the Canal's transisthmian channel are the locks with their limited dimensions of 1,000 feet in length, 110 feet in width, and 41 feet in depth. These need to be replaced with larger and deeper lock chambers and by the construction of a third set of larger locks supplementing the existing two sets at each end of the Canal, at a cost for the first year of $55 million and an overall cost of approximately $1.5 billion, as compared with an estimated cost of approximately $2.8 billion for the chimercial sea-level project. But it would be folly for this government to invest additional millions of dollars in modernizing the Canal only to abandon it to another nation. There is strong feeling in the Congress that the large sums involved in major modernization should not be expended in an area not under the sovereign control of the United States in perpetuity.

Under the putative concessions of sovereignty already made by United States officials violative of the constitution, the law, court decisions, and the facts, this nation has been already maneuvered into a position where it can prevent the physical seizure of the canal and its nationalization by Panama only by force. In view of the concessions already illegally made to Panama the question whether the people of the United States can still save the Panama Canal can at present be given only an equivocal answer. If presidents can repudiate the solemn treaty commitments of the nation and can overrule Supreme Court decisions with impunity the people of the United States have already lost the blessings of liberty guaranteed by constitutional government. In the office of the governor of the Canal Zone a task force of public employees has been working for several months to complete legal arrangements for phasing out United States jurisdiction over the Canal, either piecemeal or *in toto, without Congressional authorization.* The question may be asked whether this task force has been set up and is operating in compliance with Article 673 of the General United States Government regulations which prohibit the use of any appropriated money for "the payment of compensation or expenses of any commission, council, board, or other similar body or any members thereof . . . unless the creation of the same shall be or shall have been authorized by law."

Under these auspices the piecemeal transfer of United States territory in the Canal Zone has already begun. The Nixon-Ford administration requested authority from Congress to transfer Old France Field Airbase to Panama but not receiving it transferred it anyway under a 15-year lease. Plans are now underway to transfer Coco Solo base also to Panama, and to respond favorably to Panama's demand for delivery of the Cristobal piers which the United States built for its own use.

The companion question, whether the United States *should* continue to exercise sovereign control over its canal and its Canal Zone, must be answered with a ringing affirmative.

The United States entered into the business of transisthmian transport in Central America in 1903 under authority of both Congressional legislation and constitutionally ratified treaty commitments. This nation has satisfactorily performed for more than sixty years its international responsibility of transiting ocean-going vessels between the Atlantic and Pacific oceans by way of the Canal. The average annual number of ships transiting the Canal numbers approximately 15,000 at a saving of hundreds of thousands of miles of transit through the Straits of Magellan or the transshipment of their cargoes across the American continents.

The United States can best promote a Good Neighbor Policy *vis a vis* the nations of Latin America by continuing to exercise sovereign authority over the Canal Zone and to transit vessels across the isthmus through the Canal with the maximum efficiency and at the least cost, as it has long been doing. The Good Neighbor Policy, as given classic expression by President Franklin D. Roosevelt in 1933, was "the policy of the neighbor who resolutely respects himself and, because he does so, respects the rights of others—the neighbor who respects his obligations and respects the sanctity of his agreements in and with a world of neighbors." The initial premise or foundation of this policy is self-respect, and it is this quality which recent administrations in Washington have been ignoring at the expense of loss of respect for us by other nations. The prediction that surrender of the Canal and the Canal Zone to Panama will improve the image of the United States throughout Latin America is, at best, mere wishful thinking. Past actions of generosity by the United States toward the nations of Latin America have given little proof that would justify hopes of a better relationship to flow from the gift of the Canal Zone to Panama. Previous concessions to Panama have not resulted in improved treaty relationships but have produced a contrary effect and have led only to increased demands.

As to the policy of the United States it should be clearly emphasized that when we fail to defend and take advantage of our own geopolitical strengths, of which the Panama Canal is a major one, or, worse, when we allow the national administration to surrender control over them and let them pass out of our possession into the hands of foreign powers we are contributing to a process of national suicide and international instability which serves the interests of those foreign powers. *When a nation fails to defend its own it is inviting extinction.*

RECAPITULATION—POINTS TO REMEMBER

1. The payment of the purchase price of $10 million gave the United States the full rights of sovereignty in perpetuity over the Zone, and the purchase of the land and property in the Canal Zone made the U.S. its owner in fee simple.

2. The total capital invested in the Canal Zone to date is about $7 billion of U.S. taxpayers' money.

3. It follows that the sovereign position of the United States in the Canal Zone is legally so firmly fixed as to be entirely non-negotiable.

4. The Republic of Panama today is dominated by a Marxist dictatorship.

5. Panama's objective is to expropriate the U.S. territory and property in the Canal Zone, including the Panama Canal, for the purpose of exploiting world commerce for her own unjust enrichment.

6. With Panama or some other foreign nation as sovereign over the Canal Zone the heaviest users of the canal will be the heaviest losers.

7. The question whether the United States *should* continue to exercise sovereign control over its canal and its Canal Zone, must be answered with a ringing affirmative.

8. The prediction that surrender of the Canal and the Canal Zone to Panama will improve the image of the United States throughout Latin America is, at best, mere wishful thinking. A firm stand on continued U.S. sovereignty in perpetuity over the Canal Zone will foster inter-American friendship. Argentina, Brazil, Chile, Colombia, Ecuador, Peru, Venezuela and all Central American countries including Panama have an important economic interest in continued exclusive U.S. control of the interoceanic canal in perpetuity.

9. When a nation fails to defend its own it is inviting extinction.

10. Recent reductions of the number of U.S. naval vessels makes the Panama Canal even more important than it was ten years ago when the U.S. possessed a two-ocean navy.

11. Because of the geological instability of the Panamanian mountains, torrential rainfall, and resulting massive landslides, no sea-level canal can be successful in Central America. Therefore, the successful Panama Canal requires completion of the third locks authorized by Congress in accordance with the approved Terminal Lake plan to accommodate larger bulk carriers in interoceanic trade.

12. Recent violations of the Monroe Doctrine by establishment of a Soviet missile base in Cuba and a Soviet beachhead in Panama constitute a clear and present danger to the security and freedom of the American people.

Panama Canal Series

QUESTIONS AND ANSWERS TO THE U.S. DEPARTMENT OF STATE

(By Donald M. Dozer, Professor of Latin American History and Inter-American Relations, University of California, Santa Barbara, 1977)

Question 1. Has the United States been sovereign over the Canal Zone since 1903?

Answer. Yes.

Title to what is called the Canal Zone passed in 1903 from Colombia to the newly formed Republic of Panama by an act of secession. The new Republic of Panama was recognized by President Theodore Roosevelt. A treaty, the Hay-Bunau Varilla or Isthmian Canal Convention, was then concluded with Panama ceding the Canal Zone to the United States and was duly ratified.

This Isthmian Canal Convention granted to the United States "in perpetuity" a strip of territory crossing the isthmus in which the United States could exercise "all the rights, power and authority . . . which it would possesss and exercise if it were the sovereign of the territory . . . to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power or authority." For this grant of sovereignty "in perpetuity" the United States paid Panama the full purchase price of $10,000,000 and later indemnified the owners of the land by purchasing it from them, thus acquiring ownership of the land of the Canal Zone in fee simple. The United States also was given the right of eminent domain in the Republic, that is, the right to condemn and expropriate land outside the Zone needed for the construction, maintenance, operation, sanitation, and protection of the Canal. It also agreed to guarantee and maintain the independence of Panama.

This Isthmian Canal Convention did not in any way establish a leasehold position for the Zone, nor qualify its status as a legally purchased territory of the United States. The word *lease* which appeared in the draft convention was replaced by the word *grants* (*conceder* in Spanish) upon the insistence of Secretary of State John Hay and Senate leaders who would have to defend the treaty in the Senate. Contrary to interpretations of the treaty by State Department personnel since 1946 the word *lease* no where appears in the treaty as defining the relationship of the Zone to the United States. Nor did the treaty establish a rental relationship between the United States and the Zone. "Compensation" was the word used in defining the annual obligation of $250,000 which the United States assumed when it took over the assets of the Panama Railroad. This was the compensation which the Railroad had formerly paid to the government of Colombia.

The wording of the treaty of 1903, therefore, and the intent of the high contracting parties establishes that Panama granted exclusive sovereignty over the Canal Zone to the United States. The treaty was immediately accepted and ratified without change by the Provisional Government of Panama in December 1903 and by the Constitutional Government of Panama in February 1904 even before it received the approval and consent of the United States Senate. The articles of the treaty granting exclusive sovereign rights, power and authority over the Zone to the United States have never been modified in any subsequent treaty between the two nations, nor in any interpretation thereof by the courts.

The character of this transfer of the Zone to the United States as a purchase or cession has been clearly recognized in subsequent agreements and acts. In an agreement signed by General George W. Davis, Governor of the Canal Zone, and Tomás Arias, Secretary of State of Panama in June 1904, defining the boundary of the United States Zone Panama further recognized the Zone as "territory ceded to the Government of the United States" by the treaty of the previous year. The National Assembly of Panama used the same word "ceded" in referring to the Zone in Law No. 88 of July 1904, and it was also used by the courts of Panama in defining the status of the Zone, thus establishing a unanimous consensus of the executive, the legislative, and the judicial branches of the Panamanian government.

To the later Panamanian objection that the treaty gave the United States only specific rights for the construction, maintenance, operation, sanitation and protection of a Canal, Hay replied in a letter to the Panamanian minister to the United States, J. D. de Obaldia, in October 1904, that the above words did not

constitute "a limitation on the grant," as Panama argued, but were rather a "declaration of the inducement prompting the Republic of Panama to make the grant." Hay's interpretation is based on the historical reasons which prompted Panama to cede the Canal Zone to the United States. He therefore properly insisted that Panama had transferred to the United States "the ordinary powers of sovereignty" over the Zone and had accordingly forfeited "any right to challenge such exercise of sovereignty" by the United States. Whereas the French Canal Company, a private company, had undertaken to dig the transisthmian canal under a mere concession from the Colombian government, the United States would use public funds in completing the canal. Congress could not appropriate funds raised by imposing taxes on United States citizens for construction of a work "of such stupendous magnitude and world-wide importance as the Isthmian Canal" except "in territory subject to the national sovereignty." (*Foreign Relations of the United States*, 1904n pp. 613–630.)

Critics of the treaty cite the clause in Article III giving the United States authority in the Zones as "if it were the sovereign of the territory," but other clauses in this same article and other articles of the treaty grant to the United States such complete authority in the Zone "in perpetuity" as to leave no doubts as to United States sovereignty over it. Further proof of the completeness and finality of the cession is furnished by the fact that the Isthmian Canal Convention, like the treaty of 1803 with France selling the Louisiana territory to the United States, the Gadsden treaty of 1853 with Mexico selling the southern portions of New Mexico and Arizona to the United States, and the treaty of 1867 with Russia selling Alaska to the United States, contains no provision for renegotiation. The transfer of all these purchased territories was intended to be and must still be considered to have been "in perpetuity."

The treaty of 1903 complied with the international commitments of the United States in the Hay-Pauncefote treaty of 1901 and with the statutory requirements of the Spooner Act of 1902. The latter directed the president to proceed with the construction of an isthmian canal only if he could obtain "perpetual control" and jurisdiction over a Canal Zone in Central America. The treaty with Panama embodying the words "grants . . . in perpetuity . . . to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power and authority," also met the requirements of the executive branch of the government. And in 1907 the treaty was interpreted by the Supreme Court in *Wilson* v. *Shaw* as having "ceded" title over the Canal Zone to the United States. The decision was reaffirmed by the Supreme Court as recently as 1972 when it denied *certiorari* to the United States Court of Appeals, 5th Circuit, in the case of *United States* v. *Husband* [*Roach*], holding that the Canal Zone is "unincorporated territory of the United States" over which Congress exercises "complete and plenary authority." (406 U.S. 935).

Question 2. Does the theory of titular or residual sovereignty have any validity at law.

Answer. No.

The theory of titular sovereignty grew out of the Taft agreement of 1904. Taft explained this theory as requiring that if the United States ever decided to abandon the Canal Zone it would relinquish it only to Panama, by whom it had been ceded to the United States, and to no other nation. But when testifying before the Senate Committee on Interoceanic Canals in 1906 Taft expressed satisfaction with the grant of exclusive United States sovereignty over the Zone to the entire exclusion of the exercise of such sovereignty by Panama and he explained that he had advanced this theory of titular sovereignty in order to appease the sensibilities of the Spanish or Latin mind, poetic and sentimental, enjoying the intellectual refinements, and dwelling much on names and forms."

Later as president of the United States Taft made an address in Panama City in which he declared: "We are here to construct, maintain, operate and defend a world canal which runs through the heart of your country, and you have given us the necessary sovereignty and jurisdiction over the part of your country occupied by that canal to enable us to do this effectively." Still later, in 1930, when Taft was Chief Justice of the Supreme Court he had an opportunity to rule on the theory of titular sovereignty in the case of *Luckenbach S.S. Co.*, v. *United States*, but instead he upheld the decision of the Court in *Wilson* v. *Shaw*.

This theory of titular sovereignty has also been used, and distorted, by administrations in Washington since 1946 to show Panama's continuing sov-

ereignty over the Zone, and it has encouraged Panamanian nationalists to make extreme demands upon the United States and to take violent action against it. Because of the exaggerated importance given to it by both Panamanians and the State Department in Washington as justification for the current negotiations over the disposition of the Canal Zone this theory must be officially denounced and repudiated.

The State Department has attempted to justify this theory of titular sovereignty on the basis of the precedents of (1) the lease of naval bases in China by France, Germany, and Russia in the latter part of the nineteenth century, (2) the Guantánamo base of the United States in Cuba, and (3) United States exercise of jurisdiction over certain Japanese islands from the end of World War II until 1971. (S. Morey Bell, Minister and Deputy United States Negotiator, Department of State, to Congressman Gene Snyder of Kentucky, December 12, 1975.)

But in the first case, the naval bases of France, Germany, and Russia in China were clearly designated as *leases*, whereas, as noted above, the Canal Zone was granted to the United States in perpetuity and is in fact United States territory. The case of Guantánamo offers on analogy, for it is a United States base in a foreign country which the United States explicitly uses on a rental basis. Moreover, in the treaty of 1903 with Cuba, unlike the treaty of the same year with Panama, the United States recognized the continuance of the ultimate sovereignty of the Republic of Cuba over the Guantánamo base. The example of the Ryuku and Daito islands is not comparable, for these Japanese islands were taken only temporarily under the jurisdiction of the United States as the victor over Japan in World War II, whereas the Canal Zone was a clean territorial purchase "in perpetuity."

These examples are self-serving attempts by the State Department to deceive and dispossess the American people of constitutionally purchased territory of the United States. The negotiating position of the State Department since 1965 is not that of the United States. It is in contempt of the Supreme Court of the United States and is not authorized by Congress, as required by Article 4, Section 3, paragraph 2 of the Constitution, which gives Congress "power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States."

Question 3. Is there any justification for renegotiating the Isthmian Canal Convention of 1903?

Answer. No.

Defenders of the surrender policy allege that the claims of United States sovereignty over the Canal Zone were tainted from the beginning because Theodore Roosevelt stretched out the hand of fellowship and consecrated the right of Panama to reassert its independence from Colombia. The Isthmian Canal Convention, they insist, was therefore concluded under duress in an era of imperialism which has now passed. Their feelings of guilt over Roosevelt's "gunboat diplomacy" and their current abhorrence of imperialism in their opinion justify the retrocession of the Canal Zone and the Canal to Panama as penance for guilt. Besides, they dolefully predict that if the United States does not capitulate to the demands of the Panamanian administration of General Omar Torrijos for surrender of the Canal Zone it will provoke guerrilla warfare against the Zone, precipitate further temper tantrums by Panamanian nationalists, and cause such aggravated hostility from other Latin American countries as to force the United States entirely out of the canal business in Central America.

The facts are that the Panamanian independence movement was conceived, planned, and executed by Panamanians, and it succeeded through the assistance of the chief engineer of De Lesseps' Old Panama Canal Company, Philippe Bunau-Varilla, who performed services for Panama comparable to Lafayette's contribution to the independence of the United States. The Panamanian patriots themselves prevented the transport of Colombian troops across the isthmus from Colón through their control of the Panama Railroad then owned by the New Panama Canal Company. As permitted by international law, the Theodore Roosevelt administration dispatched warships to the scene of the Panamanian revolution in November 1903 for the protection of the lives and property of United States citizens and to protect freedom of transit across the Isthmus of Panama as required by Article 35 of the treaty of 1846 with New Granada (Colombia).

Although they were not obliged to fire a shot for this purpose the presence of this United States military force in Panamanian waters undoubtedly exerted a moral influence in preserving the peace, preventing bloodshed, and thereby contributing to the success of the Panamanian independence movement.

Panamanian patriots, who had been working for independence for many years, found in Colombia's rejection of the Hay-Herrán canal treaty in early 1903 a stroke of fortune. Colombia's action blocked Panama's hopes for the selection by the United States of a Panama route, instead of the Nicaraguan-Costa Rican route for a transisthmian canal. The new Provisional Government realized that only the United States had the facilities to complete this gigantic project. United States isthmian canal policy from the time of President Grant had been an American canal on American soil under American control. The provisional government of Panama therefore promptly and duly accredited Bunau-Varilla as Envoy Extraordinary and Minister Plenipotentiary with full powers for political and financial negotiations to sign a canal treaty satisfactory to the United States. By the treaty which he signed with Secretary of State Hay, Panama gained a guaranty of its independence by the United States and the assurance that the isthmian canal would be built adjoining its territory rather than by the Nicaraguan-Costa Rican route. The start of construction work on the Canal in 1904 marked the beginning of a new era of unprecedented prosperity for Panama.

Except for a few Panamanian extremists, the new Panama nursed no grudges against the United States for enabling it to become an entrepôt of international commerce. The aggrieved nation was Colombia, and in 1922 the United States indemnified her for "the political events in Panama in November 1903" in the amount of $25,000,000. By the Thomson-Urrutia treaty between the two nations Colombia recognized that "title" to the "interoceanic Canal and the Panama Railway . . . is now vested entirely and absolutely in the United States of America without any incumbrances or indemnities whatever."

Those who argue that the United States possesses only limited rights and not sovereign status in the Canal Zone point to Hay's admission to the Senate Committee on Foreign Relations that the treaty was "vastly advantageous to the United States and, we must confess, not so advantageous to Panama." But Hay's purpose in this statement was to present the treaty in a favorable light to the Senate so that he would not have to make further demands upon Panama and perhaps be obliged to reopen negotiations. Does any treaty ever produce equal benefits for all signatories? The United States with its greater wealth, maritime commerce, and productive capacity was and has continued to be much more capable of deriving advantage from the Canal, but over the 62 years of the Canal's operation Panama also has gained enormous benefits from it and has emerged as the nation with the highest standard of living in all of Central America and one of the highest in Latin America.

Theodore Roosevelt's statement in his address at Berkeley, California, in March 1911, "I took the isthmus," has also been advanced as a pretext for retroceding the Canal Zone to Panama as restitution. Since Panama offered the Canal Zone as an inducement to the United States to select the Panama route instead of the Nicaraguan route for a transisthmian canal, Roosevelt would have been guilty of gross negligence and liable to condemnation by future generations if he had not taken advantage of the Panamanian offer. At no time since then has there been any public demand or any legislative authorization to retrocede the Canal Zone to Panama or to any other nation. It remains sovereign territory of the United States. As for the Canal itself it was constructed entirely at United States expense and remains United States property in perpetuity.

The allegation that the treaty of 1903 must be replaced by a so-called modern treaty because of changed conditions represents an attempt to revive the 19th century concept of a canal built by a concessionaire for a specified period of time at the end of which the canal would become the property of the former sovereign, in this case Colombia. On the contrary, the Panama Canal was built on American soil, with American money, and under American control consistent with the traditional United States isthmian canal policy spanning more than a century and remaining still the law of the land.

Question 4. Has the United States been brought perilously close to a permanent loss of its sovereign position in the Canal Zone by ill-advised and ill-motivated diplomatic and political maneuvers?

Answer. Yes.

Of all the treaties negotiated by the United States with Panama since the treaty of 1903, including those of 1936, 1955, and 1967, none has been negotiated under Congressional authorization. For all these treaties the executive, that is the President and the State Department, have taken the initiative, assumed responsibility, and expected to receive subsequent approval of the Congress.

In the treaty of 1936, at the request of Panama the United States abrogated its guaranty of Panama's independence. It also gave up the right of eminent domain for canal purposes in Panamanian territory outside the Canal Zone. To compensate for the devaluation of the gold dollar the Franklin Roosevelt administration abrogated the gold obligation and replaced it with an annuity of 430,000 *balboas*. A fourth concession which the United States made to Panama was to abrogate its right to maintain public order in the Panamanian cities Colón and Panama, and, fifth, the United States agreed to furnish Panama with customhouse sites in the United States Zone to enable the Panamanians to utilize the United States ports of Cristóbal and Balboa, which had been constructed at United States expense, because Panama had failed to dredge its own deep-water ports. To protect the United States against further demands, under Secretary of State Sumner Welles, who was one of the United States negotiators, attached to our copy of the treaty a memorandum stating that the Panamanian Foreign Minister, Dr. Ricardo J. Alfaro, and the Panamanian Ambassador had agreed that the new treaty fully met every possible request they might ever make. They therefore renounced further changes. (Spruille Braden, *Diplomats and Demagogues*, Arlington House, New Rochelle, New York, 1971, p. 399).

Nevertheless, in 1940 when the United States required additional air bases in Panama outside the Zone for the protection of the Canal against air attacks from Nazi commercial airports in Central and South America, Panama held up the United States for more than one billion dollars. After World War II Panama refused to allow further use of these air bases, constructed wholly at United States expense, despite the 1936 treaty. Since then every new concession by the United States to continuing demands of Panamanians has been met by accelerating demands, blackmail, and temper tantrums on their part.

Contrary to the contention of the State Department the status of the United States as sovereign over the Canal Zone was not altered by the treaty of 1936. The phrase "the territory of the Republic of Panama under the jurisdiction of the United States of America." which occurs in Article III, Paragraph 6. of the treaty does not compromise United States sovereignty in the Canal Zone. This interpretation is confirmed by Article XI of the same treaty which stipulates that "the provisions of this Treaty shall not affect the rights and obligation" of either the United States or Panama "under the treaties now in force between the two countries, nor be considered as a limitation, definition, restriction or restrictive interpretation of such rights and obligations."

In 1955 President Dwight D. Eisenhower secured a 15-year renewal of the Rio Hato base for which the United States Department of State agreed to increase the annuity by 1,500,000 *balboas*, to give Panama certain commercial advantages, to surrender $40 million worth of United States real property in the Panamanian cities of Colón and Panama, and to provide improved employment opportunities for Panamanians in United States Government and Panama Canal positions.

In 1960 Eisenhower made a presidential decision authorizing the flying of the Panamanian flag alongside the United States flat at Shaler Triangle in the Zone to give visual evidence of the titular sovereignty of Panama, in violation of the supreme law of the land, namely, the exclusion clause of Article III of the Hay-Bunau Varilla treaty of 1903 and the Gross amendment to the State Department appropriation of 1961 enacted by Congress and signed into law by the President.

President Kennedy later authorized the flying of the Panamanian flag at seventeen locations in the Zone. The encouragement thus given to Panamanian nationalists led to the bloody riots of January 1964 and the eventual opening of negotiations between the two governments looking toward the transfer of the Canal Zone to Panamanian sovereignty. These resulted in treaties in 1967 which were unacceptable to Panama, but negotiations were reopened by the Nixon administration in 1971 and still continue.

Control of strategic waterways of the world including the United States Isthmian Canal has been one of the major geopolitical objectives of the Soviet since 1917. This objective was promoted by Alger Hiss when in 1946, with the approval of Secretary of State Dean Acheson, he forwarded to the United Nations the

annual report on the Canal Zone as an "occupied territory" under Article 73 of the Charter of the United Nations. After 1961 presidents Kennedy and Johnson made several presidential disclaimers of United States sovereignty over the Zone. The most recent instance of this policy of surrender by the executive branch without authorization of Congress was the "Joint Statement of Principles" of February 7, 1974 between Secretary Henry A. Kissinger and the Panamanian Foreign Minister, Juan Antonio Tack, in which Kissinger acknowledged Panama as the territorial sovereign over the canal zone and promised that "the Panamanian territory in which the canal is situated shall be returned to the jurisdiction of the Republic of Panama." The United States investment in the Canal Zone and other United States property including defense now amounts to nearly $7 billion. Under the Constitution neither the president nor the secretary of state possesses unilateral authority to commit the United States to any such give-away of United States territory and property.

Although Kissinger did not indicate a date of retrocession, which remains to be negotiated, his statement gave encouragement to Panama to nationalize the Canal Zone and confiscate the Canal whenever it sees fit to do so. Credible intelligence reports indicate that this may occur during November 1976 when Panamanian ambassador Jorge Illueca presides over the Security Council of the United Nations and the United States Congress will be in recess for the elections. On May 5, 1976 the Panamanian dictator, General Torrijos, issued what was in effect an ultimatum to the United States demanding the turning over of the United States Canal Zone to Panama by 1977 under threat of violence in the event of failure to arrive at a new treaty providing for such surrender. (*Star & Herald*, Panama, R.P., May 20, 1976.). Already Communist cadres from Cuba have been landed on the Isthmus and are awaiting a signal to take over the Zone. The Pentagon, it is reliably reported, has recently delivered to General Torrijos several helicopters which can be used for this purpose.

Under such threats of duress and intimidation and in pursuance of White House policy the executive branch of the United States government has already begun to phase out the treaty-based sovereign rights, power, and authority of the United States in the Canal Zone by replacing United States citizens with Panamanians in Canal jobs, by allowing Panamanian police officers to exercise jurisdiction within the limits of the Zone, by giving Panama a fifteen-year lease on Old France Field and otherwise weakening the defensive position on the United States—all without prior Congressional authorization in violation of the Constitutional provision that "the Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States."

Question 5. Will the Canal continue to serve the needs of world commerce if and when it is transferred to Panamanian sovereignty?

Answer. Probably not.

Panama is wholly unqualified to assume physically, technologically, and politically the grave responsibilities involved in the maintenance, operation, sanitation, protection, defense, and improvement of an engineering work as great as the Panama Canal. Whereas the United States is bound by international treaties to preserve the neutrality of the canal and to keep it free and open to the vessels of all nations "on terms of entire equality . . . and at charges of traffic which are just and equitable," Panama is bound only by the 1903 treaty. The claims which Panamanian negotiators have already and repeatedly made for income from the Canal operation show that they regard the Canal primarily as a source of both national and personal wealth to be exploited for their own unjust enrichment. Besides, what defensive capability does Panama have to prevent a Soviet takeover of this international waterway? Only the United States possesses this capability. It is a requirement of national honor that the United States continue militarily to prevent the seizure and to defend the freedom of the Panama Canal in perpetuity in accordance with its solemn treaty commitments.

As to the strategic importance of the Canal to the United States two retired commanders of the Pacific fleet, Admiral John S. McCain, Jr., and Admiral U.S. Grant Sharp, have emphasized the indispensable strategic value of the Canal to this country. Thomas Moorer, former Chief of Naval Operations and Chairman of the Joint Chiefs of Staff, has expressed the same views. Admiral Elmo R. Zumwalt, speaking on nationwide television, testified to the presence of Soviet nuclear-firing submarines patroling both coasts of the North American Continent. Every

anti-submarine warfare unit of the United States Navy can transit the Canal. It is the lifeine of the republic and essential for the prepositioning of defensive forces in both oceans. The often expressed concern over the impossibility of moving aircraft carriers through the Canal is groundless, for transit has been eliminated from their design characteristics. All missile-firing units of the modern navy can transit the existing canal.

The economy and prosperity of the United States depends on the Canal, which handles 16 per cent of the ocean-going traffic of the nation. The future of the Canal as a maritime facility lies in the transit of bulk shipments, such as oil, iron ore, coal, grain, and container cargoes. Any interference with canal traffic or any reduction in the efficient operation of the canal or any unreasonable increase in canal tolls will adversely affect the economy of every state in the Union.

The diplomatic justification for renegotiations has been exaggerated by State Department advocates. Recent action by several Latin American governments declining General Torrijos' invitations to attend a Pan-American conference in Panama call in question the State Department allegation of unanimous Latin American support of Panama.

The Soviet Union already possesses a major beachhead in Cuba. Its submarine and other naval vessels based there prowl at will in Caribbean waters. The United States base at Guantánamo is virtually under seige, and the Castro government in Cuba is supporting a "liberation" movement in Puerto Rico endangering an important United States naval base there. A Soviet Axis of power including Cuba, Panama, and Puerto Rican liberationist forces already exists in the Caribbean and receives support from Trinidad-Tobago and Jamaica. The critical situation of the United States in the Canal Zone, produced largely by Washington policy-makers, is not a mere local question between the United States and Panama. It is part of a global power struggle directly related to the security of the United States and the entire Western Hemisphere.

The Caribbean-Gulf area is well on the way to becoming a Red Lake. Upon the defense of the Canal Zone by the United States depends the fate of the Canal. Upon the fate of the Canal depend the safety of world sea lanes and the fate of the entire Caribbean-Gulf area. On these factors depends the survival of the United States as a free and independent nation and the safety and welfare of the American continents.

Question 6. Are any alternative courses of policy and actions still open to the United States in relation to the Canal Zone?

Answer. Yes.

It is a minimal obligation of every president of the United States to use his executive power not to dismember the national territory of the United States but to deliver the territory in its entirety undiminished to his successor in office. Where is it written that the President or his Secretary of State can give away national territory as a condition of negotiating a new treaty? Neither the Constitution nor the law gives him any such authority. Even the State Department officially acknowledges that the president's power to negotiate is limited to subject matter which "is appropriate for international negotiation." (Statement of Carl F. Salans, Deputy Legal Adviser, Department of State, in House of Representatives, Committee on Merchant Marine and Fisheries, Hearings, *Panama Canal Treaty Negotiations*, November 1971–August 1972, Serial No. 92–30, Government Printing Office, Washington, D.C. 1972, pp. 14–15.) But clearly the surrender of the national domain is not such subject matter. The decision as to renegotiation of the purchase of the Canal Zone, which was bought and paid for by United States taxpayers and which belongs to them, rests entirely with the American people and their elected representatives in the Congress. Despite the barrage of misleading and dishonest propaganda that has been directed to them the American people have spoken overwhelmingly against its surrender.

Panama can have nothing to say about the future disposition of the Canal Zone. Nor are the President and Secretary of State empowered under the Constitution to give it away now or at any future time. The presidential and other executive disclaimers of United States sovereignty already made account in part for the financial deficit which the canal has been incurring since 1972, for the first time in 59 years. As long as the executive is trying to surrender sovereign authority over the Zone and calling in question its status as a United States territory Congress will quite properly refuse to appropriate funds needed to achieve a major modernization of the canal which will increase its business and enable it to transit larger ships.

The essential premise of future action by the United States in relation to the Canal Zone is to terminate the current negotiations with Panama and to assert officially the continuance of undiluted sovereign control over the Canal and its protective framework, the Canal Zone. In addition, legislation, already pending in Congress, should be enacted into law providing for United States citizens in the Zone to elect a delegate to the Congress so that they may have legislative representation in Washington, may enjoy the inalienable right of self-government, and will not be subject to unauthorized arbitrary and oppressive action by executive departments. Further, the defense force of the United States in the Caribbean should be strengthened by the reactivation of the Special Service Squadron to show the flag in the Caribbean. Once the fact of United States sovereignty over the Canal Zone is reaffirmed work can be resumed toward completion of the larger third locks authorized by Congress in 1939 in accordance with the approved Terminal Lake-Third Locks plan. This project when completed will enable the Canal to accommodate all bulk carriers capable of navigating in restricted waters and will serve the interests of world commerce efficiently for many decades to come. This can be accomplished under present treaty arrangements and does not require a new treaty. But Congress will not authorize the expenditure of public funds for completion of this long-needed improvement unless its status as sovereign territory of the United States is assured and maintained in perpetuity.

With the termination of negotiations the United States should work with Panama to help the Panamanians understand that the best guaranty of their national sovereignty, freedom, security, and prosperity lies in maintaining the grant of sovereignty to the United States in the Canal Zone. The alleged indignity or humiliation which Panamanians suffer from the fact that the United States Zone bisects the republic is insignificant in comparison with the economic benefits which Panama has long received from the Zone and the Canal and will continue to receive under an enlarged interoceanic canal. United States officials should undertake to do what they have unfortunately thus far failed to do, namely, to demonstrate by easily available hard facts the benefits that have accrued not only to Panama but to virtually every other Latin American country from the successful operation of the Canal by the United States since it was opened to world maritime traffic in 1914. Pride in accomplishment, not a sense of guilt, should characterize the attitude of the United States on this question. To regain our self-respect on this issue will increase the moral strength of this nation in dealing with Latin America and will help to enable this country to regain its lost reputation for leadership and greatness.

EXAMINATION OF DR. DOZER

Senator ALLEN. I feel you have made a great contribution to the Nation by your testimony. We appreciate it very much.

I will ask Senator Hatch if he has any questions.

Senator HATCH. Dr. Dozer, I read your statement. I had to be absent for a few minutes to go to another committee meeting. But I am very appreciative of the efforts that you have made to bring your point of view here today. I thought your testimony was well-reasoned. You put a lot of work into it. We are very appreciative of it.

Senator SCOTT. I would add my commendations. I am in substantial agreement with everything you have said. I believe the subcommittee is also.

Do you have any suggestions as to how we could arouse public opinion? I still believe in the sovereignty residing in the people. If there are any suggestions you might have as to how we could get an aroused public and a knowledgeable public, then I would be grateful for those. That is all I have to ask.

Mr. DOZER. I have made numerous speeches, mainly in California but also some in other areas, on this subject.

Senator SCOTT. Your works are well known. I have read some of your material.

Mr. DOZER. Thank you.

I have been in Latin America as recently as this year. I gave lectures in Guatemala and also in Chile and Argentina. I received no flak, no arguments against our continued retention of the canal. The Latin Americans that I know—and I have excellent contacts in all of the countries of Latin America—want us to keep the canal because their own commerce depends upon it.

Senator SCOTT. Mr. Chairman, I appreciate the contribution of this witness.

Senator ALLEN. I certainly agree with you, Senator Scott. The entire subcommittee does.

Senator HATCH. I think yours is one of the more comprehensive statements that we have received. You have put forth a great deal of effort, and I hope for the benefit of the public that they would read what you have had to say.

Mr. DOZER. Thank you very much.

VALIDITY OF ALASKAN PURCHASE

Senator HATCH. May I ask you one question, Mr. Dozer?

You have this statement in your written testimony: "Early in the Eisenhower administration the Soviet Union officially challenged the validity of the Alaska Purchase of 1867. Admission of Alaska to the Union as a new State ended that controversy."

How do you feel that applies to this particular issue?

Mr. DOZER. Here was a question raised as to the legality, perhaps also the sovereign status, of the United States as a result of the treaty with Russia in 1867. I was in the State Department at that time. I was aware of the questions that Russia sent. One of my colleagues there was sent by the State Department to Alaska to find substantiating information to support our position in Alaska. He went all the way to Fairbanks at Government expense looking for material to prove that we owned Alaska.

I am sure that this stimulated the statehood movement in Alaska and undoubtedly contributed to making it a State.

Senator HATCH. Thank you.

Senator ALLEN. Thank you very much, Professor Dozer.

[Prepared statement of Dr. Dozer follows:]

STATEMENT OF DONALD MARQUAND DOZER
BEFORE THE SEPARATION OF POWERS SUBCOMMITTEE
OF THE COMMITTEE ON THE JUDICIARY
JULY 29, 1977

Mr. Chairman and members of the Subcommittee: My name is Donald Marquand Dozer. I am professor emeritus of Latin American History and Inter-American Relations at the University of California, Santa Barbara. I won't take up the time of the Subcommittee with my curriculum vitae, but I do want to indicate that I have been concerned professionally with Latin American affairs for over 35 years. I served in the Department of State for 12 years. In 1944, I entered the State Department's American Republics Analysis and Liaison, and then became chief of that department. Later I worked in the Office of Intelligence and Research, and was the coordinator of a special research project for the Joint Chiefs of Staff. I was the Department of State representative to a special conference on Panama, in the Canal Zone, in 1948, and then as a member of the U. S. delegation to the 9th International Conference of American States, in Bogotá. I am also an historian and worked in the Historical Division of the Department of State. My academic career has been spent at American

University, Harvard University, the University of Maryland, the Brookings Institution, and the University of California, Santa Barbara, with numerous sojourns in Latin America. I have visited the Canal Zone and Panama many times, most recently in 1975. In 1972 I received the Alberdi-Sarmiento Award from the great Argentine newspaper, La Prensa, for distinguished contributions to Inter-American friendship; I am only the second North American in 23 years to receive that honor.

The question before the American people and their elected legislators in Washington is whether or not the President has constitutional power to dispossess the United States of territory which has been added to the national domain by purchase authorized and approved by the Congress. Article IV, Section III, Clause 2 of the Constitution grants, not to the President, but to "The Congress...Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States..." The insistence by the executive upon construing the treaty-making power as blanket authority to prejudice valid treaty-based claims of the United States to the Canal Zone constitutes an insurrection against constitutional government. Any unauthorized action by a president

or his executive agents purporting to diminish the national domain under his treaty-making power is an act of executive usurpation. It is therefore ultra vires and must be treated as null and void. If it goes unchallenged to final settlement it may set a precedent for further dismemberment of the national territory by executive fiat.

This is no mere boundary dispute. There is no precedent in our history for the disposition of territory which has been added to the national domain by purchase. The retrocession of the Canal Zone to Panama, as proposed in the current negotiations, has never been authorized by Congress. Nevertheless for the past twelve years presidents and their diplomatic agents have been negotiating away the solid treaty-based position of the United States in the Canal Zone which Panama granted in perpetuity for the purchase price of ten million dollars.

Thirty-nine thousand, two-hundred United States citizens live and work in the Canal Zone to operate, maintain, sanitate, and defend the freedom of transit of the isthmian Canal. These dedicated men and women, some of whose grandfathers built the Canal, have made a lifelong contribution to the unblemished record of the United States in honoring its international commitment to keep the Canal free and open to the vessels of all nations on terms of equality at charges which are just and equitable.

When the government officials of Panama voluntarily withdrew from the Canal Zone in 1904 and transferred jurisdiction to the United States officials who succeeded them the president

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of the United States extended the Bill of Rights to the inhabitants of the Canal Zone by executive order. The civil rights of United States citizens in the Canal Zone are now guaranteed both by the Constitution of the United States and by the Canal Zone code enacted into law by Congress.

Where in the constitutionally limited treaty-making power of the executive can any president find authority for his Secretary of State and ambassadors to betray the human and civil rights of these loyal United States citizens and to betray them to the merciless oppression of a Marxist dictator? These citizens now look to patriotic statesmen in the United States Senate to preserve, protect, and defend their human rights, their Anglo-Saxon heritage of the English language, and their common-law rights of habeas corpus, freedom of assembly, freedom of speech, and freedom of religion. These unauthorized negotiations confront Congress with a constitutional crisis and violation of the principle of separation of powers.

During the nineteenth century, the policy of Colombia was to grant concessions for building the Panama Railroad and the Panama Canal by privately owned companies. In 1867 Colombia extended the Panama Railroad franchise for ninety-nine years upon payment of one million dollars and an annual payment of $250,000. At the end of the concession the railroad was to become the property of the Republic of Colombia. Similarly the Wyse Concession to private French interests granted them the right to construct, maintain, and operate the Panama Canal for a period of ninety-nine years from the date of opening of the Panama Canal to traffic, at the

end of which time the Canal was to become the property of Colombia.

After the failure of both the French Panama Canal Company and the American Maritime Canal Company of Nicaragua toward the end of the nineteenth century, it became obvious that only the resources of a powerful and well-financed government were adequate to complete an interoceanic canal. The concept of a canal concession ended at the turn of the century.

At the beginning of the twentieth century when the United States undertook construction of an interoceanic canal across the Central American Isthmus, Congress required by a provision in the Spooner Act that a strip of land from the Caribbean Sea to the Pacific Ocean be placed under the "perpetual control" of the United States. Then as now, Congress could not appropriate funds raised by imposing taxes on the American people for constructing an Isthmian Canal except in sovereign territory of the United States. When Colombia found the requirements of the Spooner law unacceptable, the Act required the President to acquire by treaty perpetual control of the necessary land from Nicaragua and Costa Rica and proceed with construction of the Nicaragua Canal.

The impudent rejection by Colombia of the Hay-Herrán Treaty was a stroke of fortune for Panama. Ever since exchange of ratifications of the Treaty of 1846 between the United States and New Granada, Panamanian nationalists had struggled in vain for independence. Confronted by loss of the Isthmian Canal to Nicaragua, they reasserted their independence from Colombia and offered a canal treaty to the United States conforming in all

respects to the requirements of the Spooner Law and the Hay-Pauncefote Treaty of 1901 with Great Britain.

The United States did not transgress in any way against the people of Panama by giving naval support to their successful independence movement of 1903. Whatever injury Colombia may have suffered when Theodore Roosevelt "took the Isthmus" which Panama offered to him was adjusted by the Thomson-Urrutia Treaty of 1914-1922. By this treaty, Colombia received the indemnity on which they had insisted in 1903. The United States purchased a quit claim for twenty-five million dollars by which Colombia recognized the independence of the Republic of Panama and acknowledged that title to the Panama Canal and Railroad "now vests entirely and absolutely in the United States without any encumbrances or indemnity whatever."

The Thomson-Urrutia Treaty also granted to the Republic of Colombia the right to transport by way of the Canal its vessels, troops, munitions of war, and certain products of its soil and agriculture at all times without paying charges of any kind and guaranteed similar service by way of the Panama Railroad if for any reason the Canal should be closed to traffic. The Hay-Pauncefote Treaty of 1901, the Isthmian Canal Convention of 1903, and the Thomson-Urrutia Treaty of 1914-1922 are three interdependent treaties. Since the Isthmian Canal Convention of 1903 is the only treaty binding Panama to Articles III and IV of the Hay-Pauncefote Treaty, the United States cannot abdicate its authority by abrogating the treaty of 1903 with Panama. To do so would be a dishonorable transgression, not only against Great

Britain and Colombia but also against all other nations which have acquired an interest in freedom of transit of the Panama Canal by right of international usage. It would be a flagrant violation of Article 74 of the Charter of the United Nations.

There is no time limit on our international commitment to other nations using the Panama Canal. Therefore there can be no substitute for the concept of perpetuity enacted into law by Congress in the Spooner Act of 1902 and embodied in the treaty of 1903 with Panama. Like all our other treaties of territorial purchase, namely, the Louisiana purchase treaty of 1803, the Florida purchase treaty of 1819, the Gadsden purchase treaty of 1853, and the Alaska purchase treaty of 1867, the treaty of 1903 with Panama contained no provision for renegotiation and no terminal date, for it was intended, like the others, to be a final transfer of sovereignty in perpetuity.

Under the 1903 treaty with Panama the position of the United States in the Zone was not that of a mere concessionaire enjoying certain specified and limited rights from the territorial sovereign, as would have been the case under the Hay-Herrán treaty. What can be more final and more conclusive than a grant in perpetuity of all the rights, power and authority of sovereignty "to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power or authority"? When the United States paid the full purchase price of ten million dollars for the Canal Zone it extinguished for all time any claim for retrocession of the territory to a former sovereign.

That the treaty transferred to the United States full sovereign control over the Zone and not just rights in the Zone is proved

by the clearly expressed intent of the high contracting parties. In the negotiations Secretary of State John Hay insisted upon and received a deed grant of the Canal Zone to the United States at the insistence of United States senators who would be called upon to defend the treaty in the Senate. In a legal brief to the Panamanian Minister in Washington, José de Obaldía, on October 24, 1904, Hay explained that the detailing of rights in the treaty did not constitute a limitation on the grant but was a "declaration of the inducement prompting the Republic of Panama to make the grant."

By Article 22 of the 1903 treaty, Panama renounced and granted to the United States, as the new territorial sovereign, the participation to which it might be entitled in the earnings of the Canal under Article XV of the Concessionary Contract with Lucien Napoléon Bonaparte Wyse, which the United States purchased from the New Panama Canal Company of France. Panama renounced and granted to the United States all rights or claims of a pecuniary nature arising under or relating to the concessions to the Panama Railroad Company or any extensions or modifications thereof. Therefore Panama has no right to any share in the earnings of the United States-owned Panama Canal Company. Panama has never made any investment in the Canal Zone, the Panama Railroad, or the Canal, whereas the United States purchased the land with all rights and titles of the private owners and now owns the land not only by territorial cession from Panama but by purchase of ownership in fee simple. The present total United States investment in the Canal Zone, the intercceanic canal, towns,

hospitals, water and sewage systems, schools, other public buildings, and fourteen defense bases including four air bases and naval stations amounts to nearly $7 billion. To this territory and property Panama has absolutely no reversionary interest in justice, law, or treaty.

As compensation for Panama's renunciation of any pecuniary claims against the United States the latter assumed the annual obligation of the Panama Railroad Company of $250,000 formerly paid by the Railroad Company to the Republic of Colombia. It agreed by treaty stipulation to pay this amount in gold coin of the United States to Panama beginning nine years after the exchange of ratification of the Isthmian Canal Convention.

Advocates of a new treaty falsely allege that this annual compensation is rent and therefore the United States does not own but merely leases the Canal Zone. Nothing can be further from the truth. Article II of the 1903 treaty grants to the United States "in perpetuity" the use, occupation, and control of a zone of land and land under water . . ." "Use, occupation and control" mean ownership, as has been so ably demonstrated by Attorney Alfred J. Schweppe, distinguished authority on property and probate law. The word lease appears nowhere in the treaty of 1903 with reference to the Canal Zone. On the other hand, the word grants (conceder in Spanish) occurs nineteen times and the phrase "in perpetuity" seven times.

The status of the Canal Zone as United States territory was recognized by the United States Supreme Court in Wilson v. Shaw (204 U.S. 24) in 1907 in the following words: "title to

what may be called the isthmian or Canal Zone, which at the date of the act was in the Republic of Colombia, passed by an act of secession to the newly formed Republic of Panama. The latter was recognized as a nation by the President. A treaty with it ceding the Canal Zone was duly ratified."

This was not a unilateral interpretation by the United States of the treaty, as falsely alleged by advocates of renegotiation. It merely affirmed what the executive branch of the government of Panama had already made explicit in the Davis-Arias boundary agreement of June 15, 1904. That agreement established the intent of the government of the Republic of Panama to cede the Canal Zone to the United States by the terms of the treaty of 1903, delimiting "the extent and boundaries of the territory ceded to the government of the United States by the Government of the Republic of Panama under the terms and provisions of said Convention for the construction of a Ship Canal." In Hay's letter of October 24, 1904 to José de Obaldía, cited above, he pointed out that all three branches of the government of Panama had acknowledged the territorial cession of the Canal Zone to the United States. He cited public law 88, enacted by the National Assembly of Panama on July 16, 1904, which in Article 23 specifically referred to the Canal Zone as "the zone ceded to the United States." He also cited several court cases by which the judicial branch of Panama acknowledged United States sovereignty over the Canal Zone.

With contempt for the rulings of the Supreme Court of the United States and in defiance of the Congress, which has actually

exercised exclusive sovereignty over the Canal Zone since February 26, 1904, recent United States presidents and secretaries of state have consistently violated the prohibition against fraud and false statement in a government matter, 18 U.S.C. 1001, by falsely alleging that Panama retained sovereignty over the Canal Zone. Their arguments are a tissue of sophistries and lies. The false allegations of Panamanian sovereignty over the United States territory of the Canal Zone are based on the theory of "titular sovereignty" promulgated by Secretary of War, William Howard Taft, in 1905 in an effort to appease the sensibilities of Panamanian nationalists. It has no standing at law. Later, while Taft was serving as Chief Justice of the United States he had an opportunity in 1930 to give some legal standing to his theory of "titular sovereignty" when he delivered the opinion of the Court in Luckenbach S.S. Co. v. United States (280 U.S. 173). He did not do so, but instead he sustained the 1907 ruling of the Supreme Court in Wilson v. Shaw. Again in 1972 the United States Supreme Court reaffirmed its ruling of 1907 by denying certiorari in the case of the United States v. Husband (R.), 1453 F. 2d 1054, (1971), in which the Fifth Circuit Court of Appeals held that the Canal Zone is "unincorporated territory of the United States" over which Congress exercises "complete and plenary authority."

The 1936 Canal treaty revision abrogated the annual gold obligation of $250,000 and replaced it with an annual payment of 430,000 balboas. It also abrogated the United States treaty right to obtain additional land for Canal purposes from the Republic of

Panama by eminent domain. This unwise concession later cost the United States excessive charges for air bases in the Republic of Panama for defense of the Canal in World War II.

At the time of the 1936 treaty, certain territory of the Republic of Panama in Colón was under the jurisdiction of the United States. It was later returned to the Republic of Panama by the 1955 treaty, which gave Panama $40 million of United States property in the cities of Colón and Panama. Advocates of a new treaty with Panama have seized upon the words "territory of the Republic of Panama under the jurisdiction of the United States of America" in the treaty of 1936 and falsely alleged that they apply to the United States territory of the Canal Zone. In fact, this phrase referred only to territory of the Republic of Panama outside the Canal Zone which was under the jurisdiction of the United States and was returned to Panama in the 1955 treaty revision. Since then there has been no territory of the Republic of Panama under the jurisdiction of the United States.

By the 1955 treaty the United States obtained a 15-year renewal of the lease for the Rio Hato defense area at an additional annual cost of 150 million balboas. When this lease expired in 1970 Brigadier General Omar Torrijos repossessed the base, but the payment of the annual tribute continues. Now Panama demands that the United States give them not only the territory of the Canal Zone and the interoceanic canal but also an immediate payment of one billion dollars upon exchange of ratification of a new treaty, annual payments of $130 million for use of the Canal and $20 million for rental of the bases, these payments to continue until

the expiration of the new treaty on December 31, 1999. The American people do not understand why under a new treaty we should be committed to paying a total of some $5 billion for the use of the Canal and for rental of military bases and territory which we now own free and clear.

This explains why when the treaty issue was debated on nation-wide television the sponsors of "The Advocates" program received votes from more than 12,000 United States citizens of whom 86 percent voted in favor of the existing treaty and only 14 percent in favor of a new treaty. More recent public opinion polls show that the American people oppose a new treaty by majorities of 5 to 1. In some Congressional districts support of the 1903 treaty runs as high as 93 percent. This was reflected in the 1976 elections by the defeat of President Gerald R. Ford, Senator Gale McGee, and other elected office holders who failed to appreciate that the voters are determined to defend and maintain United States sovereign control over the Canal Zone in perpetuity.

The following actions disclose an ominous pattern of executive usurpation which is now sought to be justified under the president's treaty-making power. It began when Milton Eisenhower, as he reported in The Wine is Bitter, p. 226, raised doubts as to "whether a treaty guarantee of rights in perpetuity can be sustained." He went on to propose a change in the accounting procedure of the Panama Canal Company in order to amortize the costs of digging and constructing the Canal so that the United States, after thus recovering costs by a bookkeeping device, might retrocede the Zone and the Canal to Panama free of financial liabilities.

Eisenhower's decision is responsible for the current operating losses in the accounting procedures of the Panama Canal Company. These new accounting procedures, however, do not recover the enormous investment of the United States in the towns, buildings, water and sewage systems, and other assets in the Zone. Working through the executive bureaucracy he succeeded in having his ideas transmitted to President Eisenhower by Secretary of State Christian Herter with a recommendation that the flag of Panama be flown in the Canal Zone. Accordingly, President Eisenhower, in violation of both the exclusion clause in Article III of the Isthmian Canal Convention of 1903 and the Gross Amendment to the Appropriation bill of 1960, authorized flying of the flag of Panama alongside the United States flag at Shaler Triangle in the Canal Zone. This act was falsely interpreted by Panamanian nationalists as a renunciation by the United States of sovereignty over the Zone and led to additional riots, demonstrations, and demands on the United States.

To these President Lyndon Johnson replied by making unauthorized arrangements for discussions of a new treaty which would "effectively recognize Panama's sovereignty over the area of the present Canal Zone." This promise was later reaffirmed, again without authorization of Congress, by Secretary of State Henry Kissinger, on instructions from President Nixon, in the Kissinger-Tack agreement of February 7, 1974, in which he assured the Foreign Minister of Panama that as a basis for the ongoing negotiations the treaty of 1903 will be abrogated and replaced by an entirely new interoceanic canal treaty and that the United States will return

the Canal Zone to the jurisdiction of the Republic of Panama "in its capacity as territorial sovereign".

These putative betrayals of national territory, initiated and sustained only by the executive bureaucracy, were not commitments by the United States. Both the Congress and the Supreme Court of the United States have officially recognized the position of the United States in the Canal Zone as one of sovereign control. The executive, on the other hand, since the late 1950's has either failed to recognize or has unilaterally and repeatedly repudiated this position of the United States government. Secretary of State Cyrus Vance therefore made a false statement when, referring to the Kissinger-Tack "Statement of Principles" he declared that "the United States cannot renege on its commitments."

Viewed in retrospect the foregoing chain of events appears to accord with a prearranged plan to circumvent the separation of powers established by the constitution of the United States. This is confirmed by the recommendation of the Linowitz Commission that the executive present the Congress with a fait accompli, leaving the Senate with no alternative except to consent to a new treaty.

As a result the United States citizens who reside in the Zone and who maintain and operate the Canal, are threatened with loss of their jobs and their homes and are being betrayed by their government. They are being replaced in their jobs by Panamanians. The Foreign Minister of Panama, Gonzalez-Revilla, recently told Governor Meldrin Thompson that the homes of United States employees in the Zone will be turned over to Panamanian workers and their

present occupants will be relegated to less desirable housing in the Republic of Panama. Reduction-in-force orders are depriving United States citizens of their positions as Canal Zone police officers. The Panamanian National Guard, which is under Communist command, will take their places within weeks after the exchange of ratifications of a new treaty. For this assignment 200 members of the National Guard have been taught to speak English. United States control in the Zone, as reported by the governor of the Canal Zone in a secret meeting with his department heads, will be phased out in six months or less.

The Zonians are petitioning now for a redress of grievances and for admission to the Union as a state by joint resolution of the two houses of Congress in order to assure the protection of their rights and to mandate the President to defend them against invasion as provided by Article IV, section 4 of the Constitution. Early in the Eisenhower administration the Soviet Union officially challenged the validity of the Alaska Purchase of 1867. Admission of Alaska to the Union as a new state ended that controversy. United States citizens in the Canal Zone have concluded that now is the time to do the same for the Zone. Senator John Sparkman, distinguished chairman of the Senate Committee on Foreign Relations, views this initiative as the "solution to the Panama Canal controversy." To this solution the United States is already committed by Article 73 of the Charter of the United Nations.

Enactment of a joint resolution to incorporate the Canal Zone in the Union as a new state would restrain Soviet imperialism in the Caribbean. It supports our historic policy of the Monroe

Doctrine for defense of the American hemisphere, continues the policy established by Congress in the Northwest Ordinance of 1787 to admit new states to the Union on a footing of equality with the original states, and follows the precedent of the Joint Resolution of 1845 for annexing Texas to the United States. It would preserve the constitutional and human rights of 39,200 United States citizens in the Canal Zone.

Experience has emphasized the wisdom of Jefferson's advice to "bind down the president with the chains of the Constitution." Jefferson said: "Our peculiar security is in possession of a written Constitution. Let us not make it a blank paper by construction. I say the same as to the opinion of those who consider the grant of the treaty making power as boundless. If it is, then we have no Constitution." (Thomas Jefferson, letter to Senator Wilson Corey Nicholas, September 7, 1803, Paul Leicester Ford, editor, THE WRITINGS OF THOMAS JEFFERSON, New York, 1897 VIII, pp. 247-248.)

The negotiations over the past 12 years have been the reaction of the executive branch alone to the tantrums, blackmail demands, and riots staged by successive Panamanian governments for nearly 20 years. From the beginning these negotiations have lacked the quality of diplomatic bargaining based upon give and take, for United States officials have furnished the Panamanians with all the arguments needed to support their case and have given away their own points. Their diplomacy has forfeited respect for the United States among the nations.

In 1933 President Franklin Roosevelt dedicated "this nation to the policy of the good neighbor -- the neighbor who resolutely respects himself and because he does so, respects the rights of others." To restore good relations not only with Panama but with other nations of Latin America the United States must, first of all, reestablish its own self-respect as a basis for winning the respect of others. This demands that we reassert our treaty rights to the Canal Zone and the Panama Canal. We must defend them as indispensable economic, geopolitical, and military assets. Then Congress will be in a position to appropriate public funds for completion of the authorized third locks in accordance with the approved terminal lake plan. This will provide for transit of larger bulk carriers urgently needed to move Alaskan oil to Gulf Coast and East Coast refineries.

When we allow the President to surrender control over national territory and let it pass into the hands of foreign powers, we are contributing to a process of national suicide and international instability which serves the interests of those foreign powers. Persistence by a President in such a course may render him liable to impeachment.

Senator ALLEN. We will now call Captain Miles Du Val. Captain, we are delighted to have you come before the committee to give us the benefit of your views. We invite you to proceed in such manner as you see fit.

TESTIMONY OF CAPTAIN MILES P. DU VAL, JR., U.S. NAVY, RETIRED; AUTHOR OF "CADIZ TO CATHAY" AND "AND THE MOUNTAINS WILL MOVE"

Captain DU VAL. Mr. Chairman and members of the subcommittee, at the start of my testimony today I dedicate my statement to the great American leaders who, in the early part of this century, formulated our Isthmian Canal policies and are thus mainly responsible for giving the world its maritime gateway from the Atlantic to the Pacific.

Mr. Chairman, my name is Miles P. Du Val, Jr., Captain, U.S. Navy, Retired. In addition to my naval career afloat and on shore, my experience includes service during the crucial period prior to, and after, U.S. involvement in World War II, with the Canal Zone Government in charge of marine operations in the Pacific section of the Panama Canal.

After combat duty in the Pacific in the latter part of the war, I was assigned in 1946 to duty in the Navy Department under the Chief of Naval Operations on orders of Secretary of the Navy, James Forrestal, as head of the Isthmian Canal studies of the Navy Department to facilitate naval collaboration with the Isthmian Canal studies under Public Law 280, 79th Congress.

In addition, I am the author of two volumes on Panama Canal history already published in several editions, a third nearing completion, and a number of professional papers on canal history and problems, including contributions to the Encyclopaedia Britannica.

It is my purpose in this statement to bring essential facts into historical perspective.

At this point, I ask that the following papers, which cover salient facts in the Isthmian problem, be inserted into the record:

Treaty of 1846 with New Granada, article XXXV;

Spooner Act, Approved June 28, 1902;

"Isthmian Canal Policy Questions—An Evaluation," U.S. Naval Institute Proceedings, March 1955; and

"Panama Canal," Encyclopaedia Britannica, 1970.

Senator ALLEN. Without objection, they will be placed into the record at this point.

[Material subsequently supplied for the record:]

A GENERAL TREATY OF PEACE, AMITY, NAVIGATION, AND COMMERCE BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF NEW GRANADA[1]

[Signed at Bogotá, December 12, 1846; ratified by New Granada, July 15, 1847; ratification advised by United States Senate, June 3, 1848; ratified by the President, June 10, 1848; ratifications exchanged at Washington, June 10, 1848; proclaimed in Washington, June 12, 1848; promulgated in Bogotá, August 16, 1848.]

Article XXXV

The United States of America and the Republic of New Granada desiring to make as durable as possible, the relations which are to be established between the two parties by virtue of this treaty, have declared solemnly, and do agree to the following points:

1st. For the better understanding of the preceding articles, it is, and has been stipulated, between the high contracting parties, that the citizens, vessels and merchandize of the United States shall enjoy in the ports of New Granada, including those of the part of the granadian territory generally denominated *Isthmus of Panamá* from its southernmost extremity until the boundary of Costa Rica, all the exemptions, privileges and immunities concerning commerce and navigation, which are now, or may hereafter be enjoyed by Granadian citizens, their vessels and merchandize; and that this equality of favours shall be made to extend to the passengers, correspondence and merchandize of the United States in their transit across the said territory, from one sea to the other. The Government of New Granada guarantees to the Government of the United States, that the right of way or transit across

[1] Manuscript, United States Department of State, Archives, Treaty Series, No. 54.

the *Isthmus of Panamá,* upon any modes of communication that now exist, or that may be, hereafter, constructed, shall be open and free to the Government and citizens of the United States, and for the transportation of any articles of produce, manufactures or merchandize, of lawful commerce, belonging to the citizens of the United States; that no other tolls or charges shall be levied or collected upon the citizens of the United States, or their said merchandize thus passing over any road or canal that may be made by the Government of New Granada, or by the authority of the same, than is under like circumstances levied upon and collected from the granadian citizens: that any lawful produce, manufactures or merchandize belonging to citizens of the United States thus passing from one sea to the other, in either direction, for the purpose of exportation to any other foreign country, shall not be liable to any import duties whatever; or having paid such duties, they shall be entitled to drawback, upon their exportation: nor shall the citizens of the United States be liable to any duties, tolls, or charges of any kind to which native citizens are not subjected for thus passing the said Isthmus. And, in order to secure to themselves the tranquil and constant enjoyment of these advantages, and as an especial compensation for the said advantages and for the favours they have acquired by the 4th, 5th, and 6th articles of this Treaty, the United States guarantee positively and efficaciously to New Granada, by the present stipulation, the perfect neutrality of the before mentioned Isthmus, with the view that the free transit from the one to the other sea, may not be interrupted or embarassed in any future time while this Treaty exists; and in consequence, the United States also guarantee, in the same manner, the rights of sovereignty and property which New Granada has and possesses over the said territory.

2d. The present Treaty shall remain in full force and vigor for the term of twenty years, from the day of the exchange of the ratifications; and, from the same day, the treaty that was concluded between the United States and Colombia on the 13th of October 1824, shall cease to have effect, notwithstanding what was disposed in the 1st point of its 31st article.

3rd. Notwithstanding the foregoing, if neither party notifies to the other its intention of reforming any of, or all, the articles of this treaty twelve months before the expiration of the twenty years, stipulated above, the said treaty shall continue binding on both parties, beyond the said twenty years, until twelve months from the time that one of the parties notifies its intention of proceeding to a reform.

4th. If any one or more of the citizens of either party shall in-

fringe any of the articles of this treaty, such citizens shall be held personally responsible for the same, and the harmony and good correspondence between the nations shall not be interrupted thereby; each party engaging in no way to protect the offender, or sanction such violation.

5th. If, unfortunately, any of the articles contained in this treaty should be violated or infringed in any way whatever, it is expressly stipulated that neither of the two contracting parties shall ordain or authorize any acts of reprisal, nor shall declare war against the other on complaints of injuries or damages, until the said party considering itself offended shall have laid before the other a statement of such injuries or damages, verified by competent proofs, demanding justice and satisfaction, and the same shall have been denied, in violation of the laws and of international right.

6th. Any special or remarkable advantage that one or the other power may enjoy, from the foregoing stipulations, are and ought to be always understood in virtue and as in compensation of the obligations they have just contracted, and which have been specified in the first number of this article.

THE SPOONER ACT[1]

(Approved June 28, 1902.)

An Act to provide for the construction of a canal connecting the waters of the Atlantic and Pacific oceans.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States is hereby authorized to acquire, for and on behalf of the United States, at a cost not exceeding forty millions of dollars, the rights, privileges, franchises, concessions, grants of land, right of way, unfinished work, plants, and other property, real, personal, and mixed, of every name and nature, owned by the New Panama Canal Company, of France, on the Isthmus of Panama, and all its maps, plans, drawings, records on the Isthmus of Panama and in Paris, including all the capital stock, not less, however, than sixty-eight thousand eight hundred and sixty-three shares of the Panama Railroad Company, owned by or held for the use of said canal company, provided a satisfactory title to all of said property can be obtained.

SEC. 2. That the President is hereby authorized to acquire from the Republic of Colombia, for and on behalf of the United States, upon such terms as he may deem reasonable, perpetual control of a strip of land, the territory of the Republic of Colombia, not less than six miles in width, extending from the Caribbean Sea to the Pacific Ocean, and the right to use and dispose of the waters thereon, and to excavate, construct, and to perpetually maintain, operate, and protect thereon a canal, of such depth and capacity as will afford convenient passage of ships of the greatest tonnage and draft now in use, from the Caribbean Sea to the Pacific Ocean, which control shall include the right to perpetually maintain and operate the Panama Railroad, if the ownership thereof, or a controlling interest therein, shall have been acquired by the United States, and also jurisdiction over said strip and the ports

[1] *Statutes at Large* (57th Cong., 1st Sess.), Vol. 32, Part 1, pp. 481–84: Public—No. 183.

at the ends thereof to make such police and sanitary rules and regulations as shall be necessary to preserve order and preserve the public health thereon, and to establish such judicial tribunals as may be agreed upon thereon as may be necessary to enforce such rules and regulations.

The President may acquire such additional territory and rights from Colombia as in his judgment will facilitate the general purpose hereof.

SEC. 3. That when the President shall have arranged to secure a satisfactory title to the property of the New Panama Canal Company, as provided in section one hereof, and shall have obtained by treaty control of the necessary territory from the Republic of Colombia, as provided in section two hereof, he is authorized to pay for the property of the New Panama Canal Company forty millions of dollars and to the Republic of Colombia such sum as shall have been agreed upon, and a sum sufficient for both said purposes is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to be paid on warrant or warrants drawn by the President.

The President shall then through the Isthmian Canal Commission hereinafter authorized cause to be excavated, constructed, and completed, utilizing to that end as far as practicable the work heretofore done by the New Panama Canal Company, of France, and its predecessor company, a ship canal from the Caribbean Sea to the Pacific Ocean. Such canal shall be of sufficient capacity and depth as shall afford convenient passage for vessels of the largest tonnage and greatest draft now in use, and such as may be reasonably anticipated, and shall be supplied with all necessary locks and other appliances to meet the necessities of vessels passing through the same from ocean to ocean; and he shall also cause to be constructed such safe and commodious harbors at the termini of said canal, and make such provisions for defense as may be necessary for the safety and protection of said canal and harbors. That the President is authorized for the purposes aforesaid to employ such persons as he may deem necessary, and to fix their compensation.

SEC. 4. That should the President be unable to obtain for the United States a satisfactory title to the property of the New Panama Canal Company and the control of the necessary territory of the Republic of Colombia and the rights mentioned in sections one and two of this Act, within a reasonable time and upon reasonable terms, then the President, having first obtained for the United States perpetual control by treaty of the necessary territory from Costa Rica and Nicaragua, upon terms which he may consider reasonable, for the construction, perpetual maintenance, operation, and protection of a canal connecting the Caribbean Sea with the Pacific Ocean by what is commonly known as the

Nicaragua route, shall through the said Isthmian Canal Commission cause to be excavated and constructed a ship canal and waterway from a point on the shore of the Caribbean Sea near Greytown, by way of Lake Nicaragua, to a point near Brito on the Pacific Ocean. Said canal shall be of sufficient capacity and depth to afford convenient passage for vessels of the largest tonnage and greatest draft now in use, and such as may be reasonably anticipated, and shall be supplied with all necessary locks and other appliances to meet the necessities of vessels passing through the same from ocean to ocean; and he shall also construct such safe and commodious harbors at the termini of said canal as shall be necessary for the safe and convenient use thereof, and shall make such provisions for defense as may be necessary for the safety and protection of said harbors and canal; and such sum or sums of money as may be agreed upon by such treaty as compensation to be paid to Nicaragua and Costa Rica for the concessions and rights hereunder provided to be acquired by the United States, are hereby appropriated, out of any money in the Treasury not otherwise appropriated, to be paid on warrant or warrants drawn by the President.

The President shall cause the said Isthmian Canal Commission to make such surveys as may be necessary for said canal and harbors to be made, and in making such surveys and in the construction of said canal may employ such persons as he may deem necessary, and may fix their compensation.

In the excavation and construction of said Canal the San Juan River and Lake Nicaragua, or such parts of each as may be made available, shall be used.

SEC. 5. That the sum of ten million dollars is hereby appropriated, out of any money in the Treasury not otherwise appropriated, toward the project herein contemplated by either route so selected.

And the President is hereby authorized to cause to be entered into such contract or contracts as may be deemed necessary for the proper excavation, construction, completion, and defense of said canal, harbors, and defenses, by the route finally determined upon under the provisions of this Act. Appropriations therefor shall from time to time be hereafter made, not to exceed in the aggregate the additional sum of one hundred and thirty-five millions of dollars should the Panama route be adopted, or one hundred and eighty millions of dollars should the Nicaragua be adopted.

SEC. 6. That in any agreement with the Republic of Colombia, or with the States of Nicaragua and Costa Rica, the President is authorized to guarantee to said Republic or to said States the use of said canal and

harbors, upon such terms as may be agreed upon, for all vessels owned by said States or by citizens thereof.

SEC. 7. That to enable the President to construct the canal and works appurtenant thereto as provided in this Act, there is hereby created the Isthmian Canal Commission, the same to be composed of seven members, who shall be nominated and appointed by the President, by and with the advice and consent of the Senate, and who shall serve until the completion of said canal unless sooner removed by the President, and one of whom shall be named as the chairman of said Commission. Of the seven members of said Commission at least four of them shall be persons learned and skilled in the science of engineering, and of the four at least one shall be an officer of the United States Army, and at least one other shall be an officer of the United States Navy, the said officers respectively being either upon the active or the retired list of the Army or of the Navy. Said commissioners shall each receive such compensation as the President shall prescribe until the same shall have been otherwise fixed by the Congress. In addition to the members of said Isthmian Canal Commission, the President is hereby authorized through said Commission to employ in said service any of the engineers of the United States Army at his discretion, and likewise to employ any engineers in civil life, at his discretion, and any other persons necessary for the proper and expeditious prosecution of said work. The compensation of all such engineers and other persons employed under this Act shall be fixed by said Commission, subject to the approval of the President. The official salary of any officer appointed or employed under this Act shall be deducted from the amount of salary or compensation provided by or which shall be fixed under the terms of this Act. Said Commission shall in all matters be subject to the direction and control of the President, and shall make to the President annually and at such other periods as may be required, either by law or by the order of the President, full and complete reports of all their actings and doings and of all moneys received and expended in the construction of said work and in the performance of their duties in connection therewith, which said reports shall be by the President transmitted to Congress. And the said Commission shall furthermore give to Congress, or either House of Congress, such information as may at any time be required either by Act of Congress or by the order of either House of Congress. The President shall cause to be provided and assigned for the use of the Commission such offices as may, with the suitable equipment of the same, be necessary and proper, in his discretion, for the proper discharge of the duties thereof.

SEC. 8. That the Secretary of the Treasury is hereby authorized to borrow on the credit of the United States from time to time, as the proceeds may be required to defray expenditures authorized by this Act (such proceeds when received to be used only for the purpose of meeting such expenditures), the sum of one hundred and thirty million dollars, or so much thereof as may be necessary, and to prepare and issue therefor coupon or registered bonds of the United States in such form as he may prescribe, and in denominations of twenty dollars or some multiple of that sum, redeemable in gold coin at the pleasure of the United States after ten years from the date of their issue, and payable thirty years from such date, and bearing interest payable quarterly in gold coin at the rate of two per centum per annum; and the bonds herein authorized shall be exempt from all taxes or duties of the United States, as well as from taxation in any form by or under State, municipal, or local authority: *Provided*, That said bonds may be disposed of by the Secretary of the Treasury at not less than par, under such regulations as he may prescribe, giving to all citizens of the United States an equal opportunity to subscribe therefor, but no commissions shall be allowed or paid thereon; and a sum not exceeding one-tenth of one per centum of the amount of the bonds herein authorized is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to pay the expense of preparing, advertising, and issuing the same.

Approved, June 28, 1902.

Isthmian Canal Policy—An Evaluation

(By Captain Miles P. DuVal, *U.S. Navy (Retired)*)*

ISTHMIAN CANAL POLICY ROOTED IN HISTORY

The Panama Canal, opened to traffic on August 15, 1914, is an interoceanic public utility for the transit of vessels of commerce and war of all nations on terms of equality as provided by treaty. The history of this undertaking is epic.

The idea of its construction traces back more than four centuries. The development of it includes extensive explorations, grave crises, and weighty decisions. Out of these the Isthmian Canal Policy of the United States gradually evolved. Yet, despite the vast literature on the canal question, nowhere are the principles of this policy comprehensively stated in one place, and they are not adequately understood. For these reasons a knowledge of key episodes of this important historical subject is essential.

The advantageous geographical position of the American Isthmus was recognized by the early Spanish who, within an incredibly short time after their arrival in 1502, explored its regions and reduced their fields of investigation to four main areas: Tehuantepec, Nicaragua, Panama, and Darien-Atrato.

Because of the lower continental divides at Panama and Nicaragua and penetration of the jungles there by river valleys, these two avenues quickly became the great rivals for trans-Isthmian commerce. They are still potential rivals.

At Panama, mountainous terrain and torrential rivers, notably the Chagres, at first represented insuperable barriers to the construction of a canal. At Nicaragua, the existence of a large lake, with the then navigable San Juan River flowing from it into the Atlantic, reduced the magnitude of that undertaking simply to cutting across the narrow strip separating the lake from the Pacific. These facts undoubtedly supply the basis for the initial predilection of the United States in the 19th Century for a Nicaraguan canal.

Eventually, the control of the Nicaragua route became a focal point of international conflict, with Great Britain and the Untied States in a diplomatic deadlock. This difficulty was not removed until 1901, when the Hay-Pauncefote Treaty superseded the earlier Clayton-Bulwer Treaty of 1850, which had deprived the United States of exclusive control of any Isthmian canal.

PATTERN OF ISTHMIAN CANAL ISSUES EVOLVES

Meanwhile, French interests under the dynamic leadership of Ferdinand de Lesseps had decided to construct a canal across the Isthmus. An International Congress for Consideration of an Interoceanic Canal met in Paris in 1879. There, this Congress wrestled with the difficult questions of selecting the best site and deciding on the best type. De Lesseps, the hero of Suez, (a simple sea-level canal), lent the full force of his prestige and his genius toward securing approval for a "sea-level" undertaking at Panama—a wholly different problem.

One engineer, the only one in that Congress who had adequately studied the geography of Isthmian regions and grasped their significance, when he saw the trend toward decision for the "sea-level" type, rose in strong protest.

He understood the topography at Nicaragua and how its elevated lake, 105.5′ high, would contribute toward the construction and operation of a canal there. He knew the surface features at Panama—the continental divide about ten miles from the Pacific, the torrential Rio Obispo-Chagres flowing into the Atlantic, and the smaller Rio Grande into the Pacific, both through contiguous valleys suitable for the formation of lakes. Interpreting these elements in the light of maritime as well as engineering needs, he recognized the lake idea as offering the solution of the canal problem.

Then, with the vision and simplicity of true genius, he proposed a "practical" plan for the Panama Canal, here summarized: "Build a dam at Gatun and another at Miraflores, or as close to the seas as the configuration of the land permits. Let the waters rise to form two lakes about 80 feet high, join the lakes thus

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*Graduating from the U.S. Naval Academy in 1918 (Class of 1919), Captain DuVal has had extensive naval service including duty from 1941 to 1944 as Captain of the Port, Balboa, C.Z., in charge of marine operations in the Pacific Sector of the Panama Canal. From 1946 to 1949 he was Navy Department Liaison Officer and Coordinator of Isthmian Canal Studies, under the Chief of Naval Operations. He is author of two books on the Canal, *"And The Mountains Will Move"* and *"Cadiz to Cathay,"* published by Stanford University Press, and is now completing a third volume in his trilogy.

formed with a channel cut through the continental divide, and connect the lakes with the oceans by locks. This is not only the best plan for engineering but also best for navigation." Essentially, that was the plan for the Panama Canal eventually adopted in 1906. The man who conceived and presented the plan was Adolphe Godin de Lepinay.

The applicability of this plan—the only one which at that time could have had any chance for success—was not understood. De Lepinay's great idea was ignored. His conception of this plan, however, and its dramatic presentation before the Paris Congress of 1879 establish him as an architectural and engineering genius—the originator of the plan from which the Panama Canal was eventually built.

The French, despite De Lépinay's timely warning, launched upon their ill-fated undertaking. Ten years later, in 1889, their effort collapsed and the Isthmus returned to the jungle. Yet, before the failure, the French, to save time and money, were forced to change their plans from "sea-level" to a modified high-level lake and lock type.

Thus, as the 19th Century closed, the pattern of interoceanic canal's focal political and engineering issues had evolved: first, a struggle among competing interests in the choice of route; and second, debate as to the type of canal, with final decision for the high-level-lake and lock type at Panama.

PANAMA WINS THE BATTLE OF THE ROUTES

In 1899, after more than half a century of exploration, including a number of naval expeditions, the United States started serious investigations by means of an Isthmian Canal Commission for exploration, 1899–1902, of which Rear Admiral John G. Walker, a distinguished line officer of the U.S. Navy, was president.

After an extraordinary political struggle, known as the "battle of the routes," the Congress authorized the acquisition for the United States of a canal zone in what was then a part of the Republic of Colombia, the purchase of the French holdings, and construction of a canal at Panama, with provision for the Nicaragua Canal as an alternate project, if suitable arrangements could not be made for one at Panama.

To this end, the Chargé d'Affaires of Colombia, Dr. Tomás Herrán, a graduate of Georgtown University and well acquainted with American governmental leaders, succeeded, after many months of arduous labor, in negotiating what was considered a most favorable canal treaty for his country—the Hay-Herrán Treaty of January 22, 1903, which was ratified by the United States Senate on March 17, 1903.

Unfortunately, this treaty became involved politically in Bogotá. The Colombian Senate, called into special session on June 20, 1903, for its ratification, rejected the treaty on August 12, 1903, against urgent pleadings of Dr. Herrán in Washington and U.S. Minister Arthur M. Beaupré in Bogotá.

Panamanian leaders, fearing that after all Panama still might lose the canal to Nicaragua, set out to prevent that possibility. Under the leadership of Dr. Manuel Amador, the state of Panama seceded from Colombia on November 3, 1903, and declared its independence. This was quickly recognized, first, by the United States, and appropriately, second, by France, the country that started the waterway. Then followed the Hay-Bunau-Varilla Treaty of November 18, 1903, which was ratified first by Panama and then by the United States.

In this treaty the Republic of Panama granted to the United States "in perpetuity" the "use, occupation and control of a zone of land and land under water for the construction, maintenance, operation, sanitation and protection" of the Panama Canal—and as if the United States were the "sovereign" of that territory. The ratification of this treaty sealed the choice of the Panama route.

The technical justification for this fundamental action was supplied by the Isthmian Canal Commission, 1899–1902, which, under the direction of Rear Admiral John G. Walker, explored all canal routes. He also headed the first Isthmian Canal Commission for construction of the Panama Canal (1904–05) under which the Canal Zone was acquired, the Canal Zone Government organized, and preliminary work started. These achievements place him in history as a principal architect of Isthmian Canal Policy.

BATTLE OF THE LEVELS AND THE GREAT DECISION

Work under the United States control started haltingly, with increasing uncertainty as to the type of canal that should be constructed—the high-level-lake and lock type or a canal at sea-level. Each proposal had strong advocates.

Fortunately, when the time for decision approached, President Theodore Roosevelt selected the great railroad builder, explorer, and business executive, the late John F. Stevens, as Chief Engineer of the Isthmian Canal Commission.

Mr. Stevens' qualification were unique. He had read everything available on the proposed Panama Canal since the time of Philip II, built railroads in the Rocky Mountains, and supervised open mining operations in Minnesota. Thus, in his experience he had witnessed what occurs when the balances of nature are altered, and understood the hazards involved in excavating a navigation channel through mountains.

Arriving on the Isthmus on July 25, 1905, at the height of a crisis, he had matters under control within 24 hours. Experienced as he was in large undertakings, he promptly provided housing for employees, organized commissaries, encouraged sanitation, ordered equipment, planned the transportation system, and formed the basic engineering organization for building the Panama Canal. Indeed, so rapid was his progress that he found himself hampered by having to wait for a decision as to the type of canal, then being considered by an international Board of Consulting Engineers.

In its report of January 10, 1906, this board split—eight members, including five Europeans, voting for "sea-level"; and the five remaining Americans voting for high-level-lake and lock. The naval member on the Isthmian Canal Commission at that time was the Chief of the Bureau of Yards and Docks, who, in a minority report, favored the "sea-level" plan as "affording greater immunity from hostile injury." [1]

Meanwhile at Panama, Stevens had walked through the entire length of the canal route and studied the topography. Interpreting it in the light of navigational requirements as well as construction, he decided upon the high-level-lake and lock plan, with the Atlantic terminal dam and locks at Gatun. For the Pacific end, he favored placing its locks in one group south of Miraflores at Aguadulce, just as he planned to do at Gatun.

Testifying in Washington before Congressional committees in January, 1906, with a conviction for the high-level plan that no one could shake, he voiced his determined opposition to the "sea-level" idea.

But one appearance was not enough. In June, he was again in Washington, still leading in this memorable struggle, later described by Colonel George W. Goethals as the "battle of the levels." On this occasion, Stevens even more forcefully and fearlessly urged the high-level-lake plan as the logical solution.

In the end, with the support of President Theodore Roosevelt, Secretary of War William H. Taft, and the Isthmian Canal Commission, the recommendations of Chief Engineer Stevens prevailed. Congress, by the Act approved June 29, 1906, adopted the high-level-lake and lock plan as proposed by the minority of the international Board of Consulting Engineers. That was the great decision in building the Panama Canal, for the second time completing the pattern of interoceanic canal political and engineering debate.

Here it should be noted that when making his recommendation to the Congress for this action, President Roosevelt did so after evaluating all available evidence of relative vulnerability and operational effectiveness of the two types. Although he understood that the "sea-level" type would be "slightly less exposed to damage in event of war," [2] he recommended the high-level plan because of its economic and operational superiority.

The transit from 1914 through August 31, 1954, in both peace and war, of more than 230,517 vessels of various types has completely established the wisdom of that decision. Moreover, it secured Chief Engineer Stevens, who was primarily responsible for bringing it about, his great fame as the basic architect of the Panama Canal.

CIVILIAN CONTROL REPLACED BY MILITARY

Though the high-level plan, as approved by the minority of the International Board of Consulting Engineers, provided for placing all Atlantic Locks at Gatun, it also specified separation of the Pacific Locks into two groups. Chief Engineer Stevens, who had had railroad operating experience, recognized the operational inconvenience of this arrangement and never favored dividing the Pacific Locks.

Eventually, on August 3, 1906, Stevens tentatively approved a plan developed by William Gerig. The proposal placed all Pacific Locks in three lifts south of

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[1] "Report of Board of Consulting Engineers for the Panama Canal" (Washington, 1906), p. xix.

[2] Ibid., p. iv.

Miraflores with the terminal dam and locks between two hills, Cerro Aguadulce on the west side of the sea-level section of the canal and Cerro de Puente on the east side,—on a natural perimeter that would have supplied the same arrangement as at Gatun. This plan, had it been followed, would have enabled lake-level navigation from the Atlantic Locks to the Pacific, with a summit-level anchorage at the Pacific end of the canal to match that at the Atlantic end.

Regrettably, Stevens was under great pressure to start construction. Advocates of the "sea-level" proposal, stung to the quick by their defeat in Congress, were poised ready to take advantage of a major change in the approved program as evidence of weakness in the high-level plan. Opponents of any canal at all were also seeking some means to delay the enterprise. These two forces together represented a political and economic strength that could not be disregarded.

Stevens' foundation explorations, necessarily made in great haste, proved unsatisfactory, and he did not dare to jeopardize the project by further delay. Twenty days later, on August 23, 1906, still confident that this important question would rise again, he voided his plan marking it, "not to be destroyed but kept in this office," and proceeded with the approved plan for separating the Pacific Locks.

In 1907, after having brought construction to a point where the success of the project was a certainty, Stevens resigned his positions as Chief Engineer and Chairman of the Isthmian Canal Commission, to which combined offices he had been appointed by President Roosevelt in recognition of his contributions. He was succeeded by Colonel George W. Goethals under whose able direction the work was carried forward.

PANAMA CANAL OPENED FOR TRAFFIC

Notwithstanding this shift in administrative control of the canal enterprise from civilian to military in 1907, the Stevens proposal to combine the Pacific Locks did not die. Colonel William L. Sibert seriously studied it and, on January 31, 1908, formally submitted a definite plan that reflected his appreciation of marine needs as the basis for navigational planning.[3] But, unfortunately, the Sibert proposal likewise was not approved for reasons then deemed adequate.

In this connection, it is pertinent to comment that after the resignation of Rear Admiral Walker in 1905 there was no experienced navigator on the Isthmian Canal Commission. Thus, one can only ponder what might have been the result had such a person been readily available for consultation with Stevens and Sibert on marine planning. In the light of later operational and engineering knowledge, developed in 1941–44, when there was such consultation between experienced engineers and marine operating officials, it is indeed regrettable that the Stevens-Sibert proposals were not adopted.

Colonel Goethals headed the project to the end, making a number of important but non-basic changes, which included a widening of Culebra (Gaillard) Cut and the locks. He developed the first permanent operating organization under the Panama Canal Act of 1912 and, as the first Governor of the Panama Canal, opened the canal to traffic on August 15, 1914, and overcame the early slide crises. He and his associates won great fame as builders of the Panama Canal.

In this connection, it should be explained that the original concept of the functioning of the canal enterprises as a civil agency under the Panama Canal Act was dual: in peace, as an interoceanic public utility under a Governor; in war, under the supreme control of the Commanding General of U.S. Army on the Isthmus. In either status, the operational mission of the waterway remained as the transit of vessels under the obvious assumption that the Panama Canal, like other transportation facilities in the United States, would serve in war as well as in peace.

DEFENSE CONCEPTS BECOME ASCENDANT

After the opening of the canal to traffic, the great builders left the Isthmus; operation and maintenance became matters of routine, and the project was uncritically accepted. The rapid development of the airplane and other modern weapons following World War I, dramatized by periodic fleet exercises off Panama, made considerations of defense matters of increasing concern; those of marine operations became secondary.

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[3] William L. Sibert and John F. Stevens, "The Construction of the Panama Canal" (New York: D. Appleton & Co., 1915), pp. 139–46 contains a summary of the Sibert proposal and its disposition.

In the excitement preceding World War II, the Congress authorized construction of a third set of larger locks, primarily as a defense measure,[4] known as the placed a new set of larger locks (140′×1200′) near each of the existing locks but at some distance away to afford greater protection through dispersal and increased lock capacity for large naval vessels. The new locks were to be joined with the existing channels by means of by-pass channels.[5]

Significantly, the plan included a number of construction features for future changing of the canal to "sea-level." Thus, discerning students recognized the Third Locks Project as renewing the old "battle of the levels" in a new form—that of "conversion."

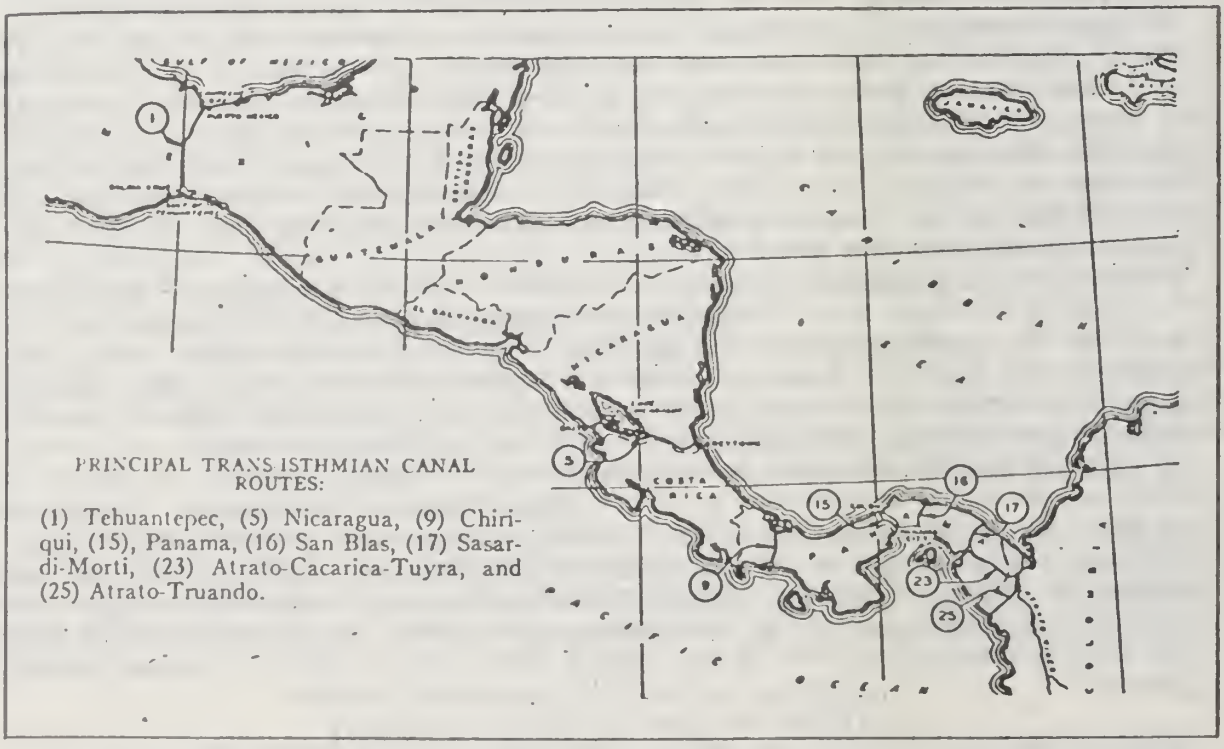
The Third Locks Project layout at the Atlantic end of the canal, which duplicates an operationally sound arrangement at Gatun, is likewise sound. At the Pacific end, however, the proposed new channel layout contained three sharp bends—29°, 47°, and 37°—in succession from north to south. The latter, if it had been completed, would have created operational problems and navigational hazards of the gravest character.

Construction started in 1940 and was pushed vigorously until suspended in May, 1942, because of shortage of ships and materials more urgently needed elsewhere for war purposes. No excavation was accomplished at Pedro Miguel; that at Gatun and Miraflores was substantially completed. Some $75,000,000 was expended.[6]

WAR EXPERIENCE INSPIRES PLAN FOR CANAL IMPROVEMENT

The suspension of the Third Locks Project, however, afforded an opportunity, while there was still time left to make such a study, for its re-examination in the light of operational needs demonstrated by marine experience. This was at a period when the Panama Canal was the scene of many military and naval expeditions on their way to and from combat zones in the Pacific. This, it should be also noted, was before the advent of the atomic bomb.

These studies conclusively established that the principal marine operational problems of the existing Panama Canal are:



PRINCIPAL TRANS-ISTHMIAN CANAL ROUTES:

(1) Tehuantepec, (5) Nicaragua, (9) Chiriqui, (15), Panama, (16) San Blas, (17) Sasardi-Morti, (23) Atrato-Cacarica-Tuyra, and (25) Atrato-Truando.

1. Dangerous traffic bottleneck at Pedro Miguel and lack of a Pacific summit anchorage.
2. Double handling of vessels at separated Pacific Locks.
3. Effect of fog in Culebra (Gaillard) Cut on capacity and operations.

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[4] Public Law 391, 76th Congress, approved August 11, 1939 (535 Stat. 1409).
Third Locks Project, at an authorized cost of $277.000,000. The proposed layout
[5] H. Doc. 210, 76th Congress, 1st sess. (1939).
[6] House Committee on Merchant Marine and Fisheries, Executive Hearings on H.R. 4480, 79th Congress, 1st sess., Nov. 15, 1945, p. 4.

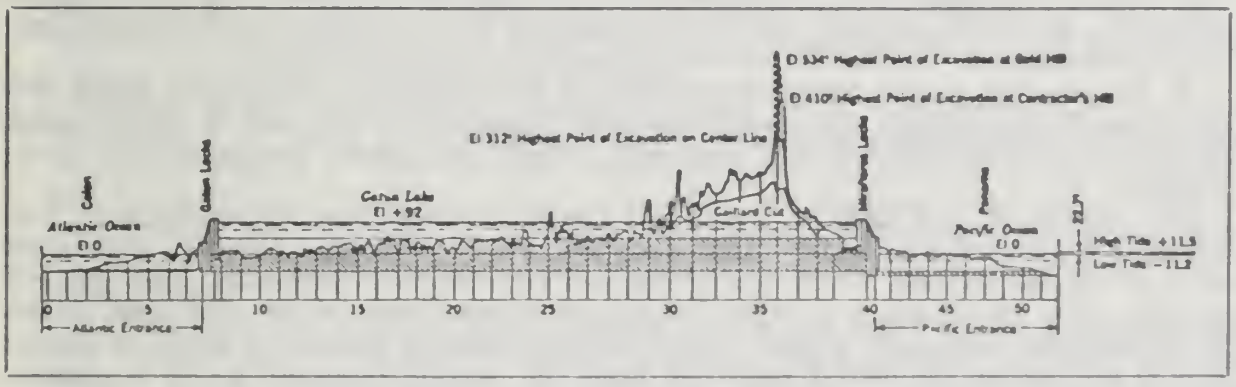
4. Lockage surges in Cut caused by operating Pedro Miguel Locks. (3′ max. amplitude).
5. Limited operating range of Gatun Lake water level (87′–82′).
6. Navigational hazards in the restricted Cut (300′ min. bottom width).
7. Inadequate dimensions of present locks for largest vessels (110′×1000′).[7]

From the nature of these inadequacies, it is obvious that locating the Pedro Miguel Locks at the south end of Culebra (Gaillard) Cut, where it created a traffic bottleneck and other problems, was the fundamental error in operational design of the Panama Canal.

Under the basic assumption that the prime function of the Panama Canal is the safe and convenient transport of vessels, it is self-evident that the wide channels of Gatun Lake afford safer and more convenient navigation than can any necessarily restricted channel at sea-level. Moreover, the advantages of unrestricted lake navigation outweigh the minor hazards and time lost by passage through locks. Thus, the best operational solution is not provided by lowering the Gatun Lake water level to sea-level, or to some intermediate-level, but by raising it to its highest feasible elevation.

The obvious economic operational solution thus is a major improvement of the existing canal according to what is known as the Terminal Lake-Third Locks Plan, which includes the following program:

1. Removal of the bottleneck Pedro Miguel Locks.
2. Construction of all Pacific Locks in continuous steps near Miraflores.
3. & 4. Elevation of the intermediate Miraflores Lake water level (54′) to that of Gatun Lake to serve as an anchorage during fog periods and to dampen surges.
5. Raising the summit water level to its optimum height (Approx. 92′).



Diagrammatic side elevation of the Panama Canal—drawing shows the canal modified and adapted to the Terminal Lake-Third Locks proposal. The present lake and lock canal is unshaded; the sea-level proposal is shaded.

6. Widening Culebra (Gaillard) Cut.
7. Construction of a set of larger locks.

These modifications will remove the traffic choke at Pedro Miguel, correct present operational dissymmetry and simplify canal control, increase channel depths, and improve navigation, mitigate the effect of fog, reduce marine accidents, decrease transit time slightly, conserve water, and increase capacity. Thus, the plan supplies the best operational canal practicable of economic achievement.

This plan was publicly revealed by its author on May 20, 1943, in an address before the Panama Section of the American Society of Civil Engineers, under the title, "The Marine Operating Problems, Panama Canal, and the Solution."[8] Attended by high Army, Navy, and Canal Zone officials, the presentation aroused the interest of the Commandant of the 15th Naval District, Rear Admiral C. E. Van Hook, who was present. He later submitted the plan to the Navy Department. On September 7, 1943, the Secretary of the Navy forwarded it to the President. Subsequently, this proposal was approved in principle by the Gov-

[7] Hon. Willis W. Bradley, "What of the Panama Canal?," Congressional Record, Vol. 94, Pt. 10 (Apr. 21, 1948), p. A2449 and "The Whys of the Panama Canal," Congressional Record, Vol. 95, Pt. 12 (Mar. 4, 1949), p. A1303 contain extended discussions of marine problems.

[8] A.S.C.E. "Transactions," Vol. 114 (1949), p. 558.

ernor of the Panama Canal for the major modification of the existing canal. According to the report of a 1949 Congressional investigation, it can be accomplished at "comparatively low cost." [9] Moreover, no doubt exists as to its soundness because a similar arrangement at Gatun has been tested since 1914 and found eminently satisfactory.

ATOMIC BOMB RESURRECTS SEA-LEVEL PLAN

The spectacular advent of the atomic bomb in 1945 injected a new element into the canal picture. Under the force of its impact, canal officials sought authority to conduct an "overall review" of the entire interoceanic canals question in the light of the then newest developments in the "military and physical sciences." [10] This was before the hydrogen bomb.

Accordingly, the Congress, in 1945 enacted legislation [11] authorizing the Governor of the Panama Canal to make a comprehensive investigation of the means for increasing its capacity *and security* to meet the future needs of interoceanic commerce *and national defense*. The law also provided for a restudy of the Third Locks Project, a study of canals at other locations, and for consideration of any new means for transporting ships across lands. Thus was launched the second major canal crisis in the 20th Century. It served to resurrect the corpses of the 1902 "battle of the routes" and the 1906 "battle of the levels" with a rehashing of all the main arguments of the earlier struggles on the basis of the newer term, "security," rather than the older one, "vulnerability."

Under a far more extreme interpretation of the "security" factor of the statute than was intended by the Congress that enacted it, the investigation was directed toward obtaining authorization for a Sea-Level Project at Panama, with the "security" and "national defense" factors as paramount, and money costs not a "governing consideration." [12] In line with the 1905–06 precedent, the naval representative on the Board of Consulting Engineers for the greater part of this engineer investigation was the Chief of the Bureau of Yards and Docks.

In the ensuing public hysteria centered on the dangers of the atomic bomb and other modern weapons, the long-range and fundamental mission of the Panama Canal to provide efficient and economic transit of vessels was generally overlooked.

The report of the 1946–47 Isthmian Canal Studies [13] recommended only the Sea-Level Project for major canal construction at Panama, initially estimated to cost $2,483,000,000. With the exception of the two terminals, this project provides for constructing a virtually new Panama Canal of 60′ minimum depth in navigation lanes and of 600′ width between sloping sides at a depth of 40′ on a new alignment somewhat removed from the present channel, which it crosses several times. The project includes a tidal lock (200′×1500′) and a navigable pass at the Pacific end, many miles of dams for flood control reservoirs on both sides of the projected canal, diversion channels and other structural features. This program would result in abandonment of the greater part of the existing waterway and the investment that it represents.

Although the 1947 report contained studies of plans for a Terminal Lake-Third Lock Project, which it did not recommend, it offered a relatively minor program for improvement of the present canal installations "to meet the needs of commerce" as a preferred alternative to the major improvement of the existing waterway as recommended to the President in 1943 by the Secretary of the Navy.

Transmitted by the President to the Congress on December 1, 1947, and without presidential approval, comment or recommendation, the report promptly encountered sharp opposition. The Congress took no action on this report. Instead, in 1949, it authorized an investigation of the organizational and financial aspects of the canal enterprise,[14] for which study Representative Clark W. Thompson of Texas, a retired Marine Corps Reserve officer, served as Chairman. This investiga-

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[9] H. Rept. 1304, 81st Congress, 1st sess. (1949), p. 2.
[10] Committee on Merchant Marine and Fisheries, op. cit., p. 5.
[11] Public Law 280, 79th Congress, approved December 28, 1945 (59 Stat. 663).
[12] See statement of Board of Consulting Engineers, quoted in Panama American, Aug. 5, 1946, p. 3, cols. 4–6.
[13] Summarized with discussions in A.S.C.E. "Transactions," Vol. 114 (1949), pp. 607–906.
[14] H. Res. 44, 81st Congress quoted in Congressional Record, Vol. 95, Pt. 2 (Feb. 28, 1949), p. 1617.

tion resulted in the first basic change [15] in the permanent canal operating organization that was established in 1914.

The new Act requires that transit tolls be established at rates that will place the operation of the canal enterprise on a self-sustaining basis—a new principle in Isthmian Canal Policy with far-reaching implications affecting the future economic management of the Panama Canal and interoceanic commerce. This subject is now under further Congressional study.[16]

CLARIFICATIONS RESTORE OPERATIONS AS BASIC FOR PLANNING

Meanwhile, in the Congress, the "security" and "national defense" premises, on which the recommendation for the Sea-Level Project was primarily based, were vigorously challenged.

As to the atomic bomb, Representative Willis W. Bradley, a retired naval officer, summarized his views: "As far as I can ascertain, the greatest authorities on modern weapons of war who have given this subject serious attention hold uniformly that any canal would be critically vulnerable to the atomic bomb, regardless of type; that a sea-level canal would be in the same security class as a lake canal; that a sea-level canal could be closed for prolonged periods of time beyond any hope of speedy restoration; and that a sea-level canal cannot be considered secure in an atomic war. These same authorities also agree that the atomic bomb is irrelevant as a controlling factor in the planning of operational improvements for the Panama Canal." [17]

Representative, now Senator, Thomas E. Martin of Iowa, a retired Army officer, developed the national defense clarification, repeatedly stressing that protection of any type of canal, wherever located, is "an over-all governmental responsibility, and that its defense, like that of the seaports, airports, railroads, highways, and productive centers of the United States depends upon the combined industrial, military, naval, and air power of this Nation as obtained in both world wars, and not upon passive defense measures, such as may be embodied in inherent characteristics of canal design." [18]

Here it should be stated that leading atomic warfare authorities, who studied the problem of Canal Zone defense in 1947, considered that arguments as to relative vulnerability of types of construction are entirely without point and that the Sea-Level Project would, in effect, constitute a "Maginot Line." This view has been greatly strengthened by the later development of the hydrogen bomb, which is measured in mega-tons of T.N.T. equivalent as compared to kilo-tons for the atomic bomb.

In the course of extensive discussions of the Sea-Level Project recommendation,[19] Congressional and administrative leaders often stressed the point that this project, if justified primarily for "national defense," would divert both funds and resources from projects and programs in the United States that are far more essential to national security. The combined effects of the defense clarifications have been toward eliminating the concept of inherent resistance to attack as the governing consideration in planning at Panama. Thus, it appears that the only justifiable security design feature is adequate protection against sabotage, which is chiefly an administrative function.

Eventually, a group of engineers and others associated in building the Panama Canal submitted their views in a memorandum to the Congress. This memorial challenged the official cost estimates in the 1947 report, charging that the Sea-Level Project would cost several times its initial estimate—$2,483,000,000—and that the Third Locks Project adapted to the principles of the terminal lake proposal (widening Culebra Cut excepted) can be accomplished at relatively low cost as compared to that of the Sea-Level Project—estimated as under $600,000,000.

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[15] H. Doc. 460, 81st Congress, 2d sess. (1950) and Public Law 841, 81st Congress, approved September 26, 1950 (64 Stat. 1038).

[16] Hon. John J. Allen, "Panama Canal—Interim Report," Congressional Record, Vol. 100, No. 149 (Aug. 4, 1954), p. A5766.

[17] Bradley, "What of the Panama Canal?," op. cit., p. A2451.

[18] Hon. Thomas E. Martin, "An Interoceanic Canals Commission, the Best Solution of Panama Canal Problem," Congressional Record, Vol. 97, Pt. 14 (July 18, 1951), p. A4481.

[19] Hon. Clark W. Thompson, "Isthmian Canal Policy of the United States—Bibliographical List," Congressional Record, Vol. 95, Pt. 16 (Aug. 25, 1949), p. A5580 and subsequent statements of distinguished members of Congress.

The statement also criticized the 1953 program for repair and alteration of present lock structures as makeshift in character and without sufficient merit, pointing out that it will delay the fundamental and long-overdue solution of the problems involved. It stated that the Governor's recommendation of none but the Sea-Level Project for major increase of Canal facilities served to exclude what may be the best solution when evaluated from all angles.

Included in an address to the House by Representative Eugene J. Keogh of New York [20] this memorandum was promptly recognized by the engineering profession.[21]

Strong appeals for the creation of a wholly American, independent, broadly based, predominantly civilian, strictly nonpartisan and objective Interoceanic Canals Commission, composed of able men who may not be dominated or unduly influenced by Federal executive agencies, have been made by responsible Congressional leaders as the best means for developing a wisely-reasoned Isthmian Canal Policy.[22]

The consequences of prolonged arguments, in and out of the Congress, have been towards restoration of economic thinking and an increased appreciation of fundamental planning concepts so well expressed during the 1905–06 "battle of the levels" by General Henry L. Abbott, the great student of the Chagres, member of the Comité Technique of the French Panama Canal Company and the international Board of Consulting Engineers, and an advocate of the high-level type. His words were: "The true criterion is ease and safety of transit, and . . . this test leaves no doubt as to which type of canal should be preferred at Panama." [23] This standard, both obvious and simple, is as true today as it was when written in 1905. Moreover, it is applicable in evaluating not only canal proposals at Panama but also those at other locations.

Diplomatic Implications

The juridical basis for the Canal Zone rests with the Hay-Bunau-Varilla Treaty, which authorized a zone ten miles wide extending five miles on each side of the center line of the canal. After extended diplomatic discussions, the boundaries of the Canal Zone were later fixed in the Price-Lefevre Boundary Convention of September 2, 1914.

An examination of the general plan of the proposed Sea-Level Project discloses a number of features not covered by current international agreements. Among these are: a new main channel alignment substantially removed from the existing channel from which the Canal Zone boundaries are measured; flooding of additional territory in the Republic of Panama in the Chagres River valley downstream from Madden Dam (Alhajuela); diverting the Chagres River from its present path west of Limon Bay to a new path east of the bay that crosses a Panamanian highway; and draining the central portion of the Gatun Lake. The last feature would disrupt present navigation channels to Panamanian settlements on the lake and uncover large and forbidding swamp areas with resulting health and sanitation consequences.

These aspects of the "sea-level" undertaking would undoubtedly bring a demand from the Republic of Panama for a new treaty covering the specific conditions for its construction. What concessions such a treaty would cost cannot be predicted. But, based upon previous experience in such diplomatic negotiations, these costs would be far greater than earlier ones, inevitably adding to the total estimate and increasing tolls.

Furthermore, such negotiations would be fraught with considerable uncertainty in the relations of the United States with Panama and other nations of Latin America, not to mention threats to the security of the enterprise through the process of its internationalization, for which there have been persistent demands.

In contrast, the Terminal Lake-Third Locks Plan, being merely an "enlargement of the existing facilities" [24] that does not call for additional "land or waters" or authority, will not require a new canal treay. This, it must be obvious, is a truly paramount consideration.

The construction of a canal at another location would introduce an entirely new diplomatic situation, which would be just as complicated as that at Panama.

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[20] "Panama Canal Construction Engineers Favor Interoceanic Canals Commission," Congressional Record Vol. 100, No. 79 (Apr. 29, 1954), p. 5491.

[21] "Panama Canal Problem," Civil Engineering, Vol. 24 (July 1954), p. 460.

[22] H.R. 8457 and H.R. 8458, 82d Congress, H.R. 1048, 83d Congress, and S. 766 and H.R. 3335, 84th Congress.

[23] Henry L. Abbott, "Problems of the Panama Canal." (New York: Macmillan Co., 1905), p. 224.

[24] Hull-Alfaro Treaty of March 2, 1936. Art. II.

The salient elements of this situation, however, are: that the 1947 report does not present these significant diplomatic involvements; that the need for negotiating a new treaty with Panama to cover the Sea-Level Project was not submitted to the Congress; and that the Congress has not authorized such negotiation as was done in the Spooner Act of 1902 for the original construction of the Panama Canal.

Isthmian Canal Policy Must Be Re-Determined

The evolution of Isthmian Canal Policy has been slow. Its principal objectives have long been the best type of canal at the best site for the transit of vessels of commerce and war of all nations on terms of equality as provided by treaty—and at low cost of construction, maintenance, operation, sanitation, and protection.

Often beset by bewildering confusions of ideas, the progress of fundamental concepts has, at times, deviated from their logical courses. Yet events have thus far conspired to avert irretrievable error. Now, with the main arguments clarified, the interoceanic canal problem in its national relationships is coming to be better understood and attention is focusing on the true objectives of securing requisite capacity and operational efficiency. Nevertheless, the evolving situation is of such grave concern that it must be protected by ceaseless vigilance and fully matured objective judgment.

The Panama Canal is now entering its fifth decade of operations. Its navigational inadequacies have been established. The canal as completed contains fundamental errors in operational design centered on the location of the Pedro Miguel Locks. These can be corrected only by the major reconstruction of the Pacific end of the canal as contemplated in the Terminal Lake-Third Locks proposal.

Commercial traffic through the canal has reached the highest volume in history. The Navy has vessels that cannot transit. Issues raised by questions of "security" and "national defense" have been formally submitted but never accepted. The principle of economic operation of the canal has been embodied in law.[25] Yet, in a physical sense, the shipway is still essentially what it was in 1914. Thus, the time has come to provide, without further delay, the additional interoceanic transit capacity and operational improvements to meet present and future needs.

The solution of this problem is not the simple proposition that it may appear. Instead, it is a highly complicated one of the greatest national importance, rising above purely personal and group considerations. It involves questions of fundamental operational and engineering planning, the decisions on which will affect the welfare of the United States and other maritime nations through the indefinite future.

These facts call for a further re-assessment of the entire interoceanic canals problem [26] based on realities, with a comprehensive restatement of Isthmian Canal Policy as derived from a reasoned line of action. This is the task that sooner or later the Congress and the Nation must meet.

[From the Encyclopedia Britannica 1970]

Panama Canal

(By Capt. Miles P. Du Val, Jr., U.S. Navy, Retired)

Panama Canal, a high-level artificial interoceanic waterway of the lake and lock type at the Isthmus of Panama connecting the Atlantic and Pacific oceans, owned, operated and controlled by the United States under treaty, for the transit of vessels of commerce and of war of all nations on terms of equality, with tolls that are just and equitable. The Canal Zone, through which it was built, is the constitutionally acquired territorial possession of the United States granted in perpetuity by the Republic of Panama for the construction of the canal and for its perpetual maintenance, operation, sanitation and protection. The gross total investment of the United States in the canal enterprise, including defense expenditures, from 1904 to June 30, 1968, amounted to $6,368,009,000; and net to over $5,000,000,000.

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[25] Public Law 841, 81st Congress, approved September 26, 1950 (64 Stat. 1038).

[26] Thompson, "Interoceanic Canals Problem," Congressional Record, Vol. 98, Pt. 8 (Jan. 15, 1952), p. A163.

By using the canal, vessels plying between the Atlantic and Pacific coasts of the United States can eliminate the Cape Horn route and save a distance of about 8,000 nautical mi., while journeys between the Atlantic and Pacific coasts of the North and South American continents can be reduced by 3,000–4,000 mi.; vessels from Europe to eastern Asia and Australia can effect a saving of 1,000–2,000 mi. Hence the canal is of the greatest international importance, strategically and economically.

This article is divided into the following sections:

I. The Waterway.
   1. Description.
   2. Navigation.

II. The Canal Zone
   1. Area and Tidewaters.
   2. Sovereignty.
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I. THE WATERWAY

1. Description

The Panama canal does not cross the isthmus from east to west as generally supposed, but from northwest to southeast, with the Atlantic entrance 33½ mi. N. and 27 mi. W. of the Pacific entrance. Located in one of the heavier rainfall areas of the world with its longest section formed by impounding the waters of the Chagres river valley by a dam at Gatun, the canal's principal features include: twin-flight locks, dams and spillways at both ends of the canal; the summit-level Gatun lake; an excavated gorge across the continental divide, renamed as Gaillard cut, connecting Gatun lake with the Pacific locks; a small Miraflores lake between two sets of Pacific locks; and two terminals.

The Atlantic terminus is at Cristóbal on Limón bay, a natural harbour protected against storms from the north by east and west breakwaters. The Pacific terminus is at Balboa, a sheltered artificial harbour with its Pacific entrance channel safeguarded from silt-bearing currents by a causeway from the mainland to the fortified islands in the Bay of Panama.

The canal length from shore line to shore line is 40.27 statute miles; and from deep water to deep water, 50.72 miles. From north to south, its main parts are:

1. Atlantic sea level dredged channel of 500 ft. bottom width from deep water to Gatun locks, about 7.4 mi.

2. Gatun locks in three steps from sea level to Gatun lake, 85 ft. above sea level.

3. Gatun lake section with channels varying in width from 1,000 ft. at Gatun to 500 ft. at Gamboa where Gaillard cut begins, distance about 24 mi.

4. Gaillard cut of 500 ft. minimum bottom width to Pedro Miguel locks at the south end of the cut, distance about 8 mi.

5. Pedro Miguel locks in one step (31 ft.) to the intermediate Miraflores lake, 54 ft. above sea level.

6. Miraflores lake with channel 750 ft. wide to Miraflores locks, distance about 1 mi.

7. Miraflores locks in two steps to Pacific sea level.

8. Pacific sea level dredged section to the Bay of Panama, distance about 8.5 mi.

The controlling depth for the Atlantic dredged section from deep water to Gatun locks is 42 ft. below mean low water; from Gatun locks to Pedro Miguel, 42 ft. below the minimum Gatun lake level of 82 ft.; from Pedro Miguel locks to Miraflores, 41 ft. below the mean Miraflores lake level of 54 ft.; and from Mira-

flores locks to deep water in the Pacific, 42.4 ft. below mean low water spring (maximum) tides.

The canal is equipped with modern aids to navigation. The Panama canal has had several major operational improvements since opening to traffic in 1914 including the Madden Dam and Power project, with its upstream lake to conserve water for lockages and maintenance of channel depths in Gatun lake during dry seasons and to reduce the danger of floods from the upper Chagres in wet seasons; replacement of lock towing locomotives; and illumination of Gaillard cut, its widening from 300 ft. to 500 ft. and deepening from 42 ft. to 47 ft., started in 1959.

On April 30, 1968, large surface ground cracks of depth were discovered on Hodges hill on the west bank of Culebra reach of Gaillard cut, and studies were begun to determine what should be done to prevent slides.

Locks.—No part of the canal attracts more attention than its massive locks. Constructed in duplicate to enable simultaneous lockages of vessels in the same or opposite direction, all locks have usable dimensions of 1,000 ft. length, 110 ft. width, and a depth to accommodate vessels drawing 40 ft. in salt water. Each lock gate has two leaves, the leaves being floatable structures 65 ft. wide by 7 ft. thick, varying in height from 47 to 82 ft., weighing from 390 to 730 tons, and operated by 40 h.p. motors through gear arrangements.

Locks are equipped with unique safety devices, notably hydraulically operated fender chains and electric towing locomotives. The fender chains protect lock gates against vessels that may get out of control when approaching locks, and are dropped into grooves to permit passage. With the exception of small craft, vessels are not allowed to pass through locks under their own power, but are required to be drawn by towing locomotives, varying in number from four to eight, depending on ship characteristics.

The time required for passage through the locks depends upon many factors, including size of vessel and its handling features. Generally, lockage intervals are 80 min. at Gatun, 40 min. at Pedro Miguel, and 60 min. at Miraflores.

Gatun Dam and Spillway.—The key structure of the Panama canal is Gatun dam, near the end of the Chagres river valley. It is about 1½ mi. long on its crest, ½ mi. wide at the base, 400 ft. wide at the water surface, 100 ft. wide at the top, and its crest is 105 ft. above sea-level. It contains 22,958,069 cu. yd. of material.

Located on a natural hill of rock near the centre of the dam, Gatun spillway was designed to provide adequate control of Gatun lake levels during the maximum known discharge of the Chagres river. The dam and spillway together with Gatun locks form the northern barrier that creates Gatun lake.

Gatun Lake and Gaillard Cut.—Gatun lake, at its normal height of 85 ft., has an area of 166 sq. mi. and a shore line of 1,100 mi.; with a watershed of 1,285 sq. mi., which includes territory of the Republic of Panama. Its designed operating range is 5 ft., between water levels of 87 and 82 ft above sea level

Gaillard cut, formerly called Culebra cut, is an artificial extension of Gatun lake across the continental divide to Pedro Miguel locks, with its original bottom at a maximum of 40 ft. above sea level, on an alignment that passes between Gold hill and Contractors hill. Its restricted channel and rocky banks make this cut the most hazardous part of the canal. A steady growth in vessel sizes and number carrying hazardous cargo has increased the frequency of transits requiring one-way navigation in Gaillard cut.

Pacific Dams, Miraflores Lake and Spillway.—Across the south end of Gaillard cut, a pair of one-lift (31 ft.) Pedro Miguel locks and two flanking dams to nearby hills form the southern barrier closing the upper valley of the Rio Grande and holding the Gatun lake water level. With crests 105 ft. above sea level, the east dam extends about 300 ft. to Cerro Luisa and the west extends about 1,400 feet to Cerro Paraiso. The east dam is a concrete wall, 260 ft. long, covered with earth; the west is earth and rock, containing 699,518 cu. yd. of material.

At Miraflores, a set of two-life locks and two dams from a second barrier closing the lower valley of the Rio Grande and creating the intermediate Miraflores lake. This lake, at 54 ft. above sea level, has an area of 1.5 sq. mi. Its watershed is 38 sq. mi.

The major part of the east dam at Miraflores is the spillway, designed to handle free flow of water from Gatun lake through one chamber at Pedro Miguel in event of accident. The west dam, with crest 40 ft. wide and 70 ft. above sea level extending 2,700 ft. to Cerro Cocoli, is the second largest dam of the canal, containing about 2,388,423 cu. yd. of material.

Terminal Facilities.—The Atlantic terminus affords safe anchorages in Limón bay and convenient pier berths at Cristóbal. The Pacific terminus has mooring buoy, dock and pier berths at Balboa; also an unprotected outer anchorage in the Bay of Panama. All piers are modern, 1,000 ft. long by 200 ft. wide, with enclosed sheds and railroad service, ample for storage of consignments and transshipment of cargo.

Both terminals are equipped for servicing of vessels, provisioning and repairs. The principal repair installations are on the Atlantic side near Mount Hope, with a 386-ft. dry dock. Larger marine and railway repair shops on the Pacific side are closed, with a 1,044 ft. dry dock in a stand-by status. Salvage tugs and other wrecking equipment are available.

2. Navigation

All vessels entering or leaving a terminal port, maneuvering in Canal Zone waters, or in transit, in general, are required to take pilots, who have charge of navigation and movement. Transits are made under rigid traffic controls. The average time required to transit is from seven to eight hours.

II. THE CANAL ZONE

1. Area and Tidewaters

The Canal Zone is a strip of land and land under water 10 mi. wide with boundaries generally 5 mi. from the centre of the canal except for the western salient covering the mouth of the Chagres river, the arms of Gatun lake extending into the Republic of Panama, and Madden lake. Beginning in the Caribbean, "three marine miles" from mean low water as provided by treaty, the zone extends across the isthmus to a distance of "three marine miles" from mean low water in the Pacific, but excludes the Panamanian cities of Colón and Panama.

The Canal Zone includes all of Gatun lake and surrounding shores up to the 100 ft. contour and all of Madden lake and its shores up to the 260 ft. contour. The total area of the Canal Zone is 647.29 sq. mi.—372.32 sq. mi. land, 185.52 sq. mi. fresh water and 89.45 sq. mi. salt water, including the Atlantic and Pacific coastal waters within the three-mile limit.

The tides at the Atlantic and Pacific terminals differ in both magnitude and character. At Cristóbal on the Atlantic side they are irregular and small, with an extreme range of 3.05 ft. At Balboa on the Pacific side, they are remarkably regular with two highs and two lows every lunar day of 24 hr. and 50 min., with an extreme range of 22.7 ft.

2. Sovereignty

Under the authority of the Panama Canal act of 1912 and in conformity with treaty, Pres. William H. Taft, by executive order of Dec. 5, 1912, declared that "all land and land under water within the limits of the Canal Zone are necessary for the construction, maintenance, operation, protection, and sanitation of the Panama Canal." Since title to all such land was acquired by the United States, the Canal Zone, in its entirety, is a United States government reservation.

The only private enterprise activities permitted within the zone are on lands rented under revocable licenses, normally to shipping interests, communications companies, banks, agriculturists and others directly connected with the canal or its operation. Areas assigned for other government purposes, in the mid-1960s, included 253 sq. mi. for the armed forces, with 176 to the army, 22 to the navy and 55 to the air force; 6 to the Smithsonian institution as a wildlife preserve on Barro Colorado; 5 as the Madden Forest preserve; 0.96 to the Federal Aviation agency; 1 to commercial licenses and 13 to Canal Zone town sites. Remaining land, largely mountain or jungle, totals over 193 sq. mi. All areas continue subject to the civil jurisdiction of the Canal Zone government in conformity with the Canal Zone code.

3. Administration

The Panama canal enterprise, as reorganized July 1, 1951, under public law 841, 81st congress, approved Sept. 29, 1950 (Thompson act), consists of two main units, the Panama Canal company and the Canal Zone government, with the dominant mission of the safe, convenient and economic transit of vessels. The Canal Zone is divided into two districts, the Balboa (or Pacific) subdivision and the Cristóbal (or Atlantic) subdivision.

Balboa and Cristóbal.—These subdivisions are coterminous with the Balboa and Cristóbal divisions of the U.S. district court. Their common boundary crosses the Canal Zone at right angles just northwest of Barbacoas Island. The Balboa subdivision includes all Canal Zone area lying southeasterly of this boundary, and the Cristóbal subdivision, all lying northwesterly of it.

Towns, except Gamboa, are clustered near the terminals convenient to canal and shipping activities, in which, directly or indirectly, most of the civilian population in the zone is employed. Gamboa, because it is the headquarters of dredging operations, is located north of Gaillard cut to prevent isolation of equipment from lake dumps in event of slides. All towns have the facilities of well-managed communities in the United States, with high standards of health, sanitation and education. The canal administrative centre is at Balboa Heights.

A long-felt defect in the 1903 treaty was failure to provide for adequate public crossings of the canal for the Canal Zone and Panama, both diaided by the waterway. This condition was initially corrected by the United States by a toll-free ferry at Balboa in 1932 under legislation sponsored by Rep. Maurice H. Thatcher, former member of the Isthmian Canal commission for whom it was named; and finally, in 1962, pursuant to treaty, by the toll-free Thatcher Ferry bridge to replace the ferries.

The population of the Canal Zone in 1968, including dependents of the U.S. armed forces, was 50,405, with 14,477 in the Cristóbal district and 35,928 in the Balboa district. The population of the principal communities was 3,489 for Gamboa and 3,139 for Balboa.

The Panama Canal Company.—This is a corporate instrumentality of the United States, operated under the management of its board of directors and charged with the maintenance and operation of the Panama canal and the conduct of business-type operations incident thereto and to the civil government of the Canal Zone.

The basic law requires that the company be self-sustaining. Its obligations include its own operating expenses, the net cost of civil government, interest and depreciation on United States investment in the enterprise, and $430,000 of the $1,930,000 annually paid to the Republic of Panama, the remainder being provided by the department of state, and thereby excluded in fixing tolls.

The Canal Zone Government.—This is an independent agency of the United States, administered by a governor of the Canal Zone, under the supervision of the president, or such officer of the United States as may be designated by him (secretary of the army). It performs the functions of city, county and state governments, with certain attributes of diplomatic character in connection with the Republic of Panama. The governor, who is appointed by the president and confirmed by the senate, is ex-officio a director and president of the Panama Canal company.

The judicial functions of the Canal Zone government are performed by two magistrate's courts, Balboa and Cristóbal, each presided over by a magistrate appointed by the governor; and by a United States district court of the fifth judicial circuit, consisting of two divisions, Balboa and Cristóbal, presided over by one judge appointed by the president.

4. Tolls

The levy of tolls is subject to provisions of the Hay-Pauncefote treaty (1901), the Hay-Bunau-Varilla treaty (1903), and the Thomson-Urrutia treaty proclaimed in 1922. Exempted from transit tolls in accordance with treaty are vessels owned, operated or chartered by the government of the Rephblic of Panama and war vessels of the Republic of Colombia; also vessels in transit solely for repairs at Panama canal shops.

Tolls are assessed on the basis of Panama canal net tonnage of actual earning capacity, a net vessel ton being 100 cu.ft. of space. Tolls cover all normal transit charges, including pilot service. Vessels operated by the United States, including warships and auxiliaries, are assessed tolls.

Tolls in 1968 were 90 cents per net ton for merchant vessels, army and navy transports, tankers, hospital and supply ships, and yachts, when carrying passengers or cargo; 72 cents per net ton on such vessels in ballast without passengers or cargo; and 50 cents per ton of displacement for other types. The average measurement per ocean-going commercial vessel in fiscal year 1968 was 7,320 net tons and average tolls per vessel, $6,357.

The Panama Canal company is authorized to prescribe and, from time to time, change rules for the measurement of vessels and tolls, subject to requirements for six months notice, public hearings and approval by the president of the United States, whose action shall be final and conclusive.

5. Canal Traffic

Although the Panama canal was conceived and built primarily as an artery of world trade, its traffic, except during World War II, has had an irregular but sustained growth since 1961 in the number of commercial transits and cargo tonnage.

	Total transits [1]	Total long tons of cargo [1]	Total tolls and toll credits
Fiscal year:			
1929	7, 197	30, 781, 755	$27, 128, 893
1933	5, 040	18, 269, 917	19, 621, 181
1939	7, 449	27, 993, 144	23, 699, 430
1943	4, 372	11, 030, 105	7, 368, 739
1950	7, 694	30, 364, 982	24, 511, 713
1955	9, 811	41, 523, 432	35, 136, 529
1960	12, 147	60, 401, 733	51, 803, 032
1965	12, 918	78, 922, 931	67, 148, 451
1967	14, 070	92, 997, 958	82, 296, 638
1968	15, 911	105, 538, 318	93, 153, 649

[1] Exclusive of transits for repairs.

Source: "Annual Reports of Board of Directors and President," Panama Canal Company.

Its traffic volume is extremely sensitive to wars and depressions, and to appreciable political, economic or other upheavals in any part of the world, such as crop failures, strikes, destruction by tropical storms, development of foreign industries and closure of the Suez canal.

A significant feature of Panama canal traffic is the pattern of its trade routes, of which eight are well defined.

The lowest traffic volume after 1933 occurred in 1943, when there were 4,372 transits by ocean-going commercial vessels with 11,030,105 tons of cargo. A high point in traffic history occurred in fiscal year 1968 when, because of the Vietnam war and the closing of the Suez canal, new records in the number of transits, toll revenue, and tons of cargo were made. Growing numbers of commercial vessels with beams over 80 ft. were using the canal, thus emphasizing the need for increased capacity.

6. Defense

The Panama Canal act of 1912 vests responsibility for protection of the Panama canal and Canal Zone in the governor, this protection being the normal exercise of police authority within the Canal Zone. Defense against external aggression is a function of the armed forces, for which the commander in chief, Southern Command, is responsible. These include army, navy and air force units, located in the Canal Zone and elsewhere.

The act further provides that "in time of war in which the United States shall be engaged, or when, in the opinion of the president, war is imminent," the president is authorized to vest exclusive authority and jurisdiction over the Panama canal and Canal Zone government in such officer of the army as the president may designate, with the governor subject in all respects to the orders and directions of the designated officer of the army.

During war or emergency, elaborate security precautions are taken by both civil and military authorities, including careful examination of arriving vessels and use of specially trained security guards during transits.

III. HISTORY

The advantageous geographical location of the Central American isthmus was recognized by the early Spanish who, within a few years after the visit there by Columbus in 1502, followed with extended explorations focused on four main route areas: Tehuantepec, Nicaragua, Panama and the Darién-Atrato. Not finding a strait, they promptly conceived the idea of constructing one.

Because of lower continental divides at Panama and Nicaragua, with penetration by large valleys, these two avenues became rivals for isthmian transit. At Panama, mountainous terrain and torrential rivers, notably the Chagres, at the time presented insuperable barriers to a canal. Lake Nicaragua, 3,089 sq. mi. in area, with its then navigable San Juan river flowing into the Atlantic, reduced the magnitude of the task to cutting across the narrow strip which separated the lake from the Pacific. Eventually, control of the Nicaragua route became a focal point of international conflict with Great Britain and the United States in a diplomatic deadlock. This situation was prolonged by the Clayton-Bulwer treaty (1850) which deprived the United States of exclusive control over any isthmian canal that it might construct.

1. Panama Railroad, 1849–55

When United States westward expansion in the late 1840s required better means for transit, three North Americans of vision, John Lloyd Stephens, William Henry Aspinwall, and Henry Chauncey, organized the Panama Railroad company. Chartered in 1849 by the state of New York, this company, under enormous difficulties, completed building the Panama railroad in 1855—the first transcontinental railroad of the Americas. Running from Aspinwall (Colón) close to the line of the future canal, this 47.5-mi. strategic rail link was the first concrete step toward construction of the Panama canal, giving it a tremendous advantage over Nicaragua in the choice of route.

In view of the key functions that this celebrated railroad was later to fill in Panama canal history, it is important to note a treaty of 1846 between the United States and New Granada (Colombia). This treaty was an offensive and defensive alliance aimed primarily toward securing a canal at Panama, even then recognized by Pres. James K. Polk as the most practicable route. It provided that the United States should guarantee the "perfect neutrality" of the isthmus and its free and uninterrupted transit.

2. French Project, 1879–1904

Meanwhile, French interests under the dynamic leadership of Ferdinand de Lesseps (*q.v.*), hero of the Suez canal, decided to construct a canal across the American isthmus. An International Congress for Consideration of an Interoceanic Canal, consisting of 135 delegates, convened at Paris on May 15, 1879, to decide upon site and type. As president of the congress, De Lesseps applied his prestige and genius toward securing approval for a sea-level of canal at Panama.

Adolphe Godin De Lépinay de Brusly, an engineer who had studied the American isthmus, protested strongly at this trend. He understood the topography at Nicaragua and how its large natural lake, 105.5 feet high, would contribute toward construction of a canal at that location. He knew the surface features at Panama—the continental divide about 10 mi. from the Pacific, the torrential Chagres river flowing into the Atlantic, and the smaller Rio Grande into the Pacific, both through valleys suitable for the formation of lakes. He emphasized the key problems at Panama as the control of the Chagres river and excavation of Culebra cut, recognized the lake idea as offering the best solution, and proposed a "practical" plan for building the Panama canal. It called for a dam at Gatun and another at Miraflores, or as close to the seas as the configuration of the land permitted, letting the waters rise to form two lakes about 80 ft. high, joining the lakes by cutting across the continental divide, and connecting them with the oceans by locks. This design, he explained, was not only best for engineering but also most advantageous for navigation.

Unfortunately for the French, De Lépinay's idea was ignored. His conception, however, and its dramatic presentation before the Paris congress of 1879, established him as an architectural and engineering genius and the originator of the plan from which the Panama canal was eventually built. The French Panama Canal company, despite De Lépinay's timely warning, launched upon its ill-fated undertaking. Ten years later, in 1889, its effort collapsed due to a combination of bankruptcy, lack of planning and disease. In France, it resulted in a sensational financial scandal. Yet, before failing, the company, to save money and time, was forced to change its plans from sea-level to a high-level lock type.

Reorganized in 1894 as the New Panama Canal company, its officers realized that their only chance of assuring any return on the investment was to hold on until the United States could be induced to take control. Thus until 1904 they limited their activities to technical studies and such excavation as were required

to protect the concession from Colombia. The total French excavation was 78,146,960 cu. yd. of material, of which 29,908,000 were later useful to the United States.

3. United States Policy, 1850–81

With active canal endeavours temporarily checked by the Clayton-Bulwer treaty and transit facilities met by the Panama railroad, United States efforts were generally restricted to explorations. It was not until Gen. Ulysses S. Grant became president in 1869 that major interests revived, with extensive naval exploring expeditions starting in 1870 and covering the more important canal sites.

With the objective of securing the best type of canal at the best site, and at least expense, the reports of these expeditions were reviewed by the first United States Interoceanic Canal commission 1872–76, consisting of Brig. Gen. Andrew A. Humphries, chief of U.S. army engineers; C. P. Patterson, U.S. Coast survey; and Commodore Daniel Ammen, chief of the bureau of navigation of the navy. Reporting to President Grant on Feb. 7, 1976, the commission was unanimous in recommending a Nicaragua canal starting on the Atlantic side near Greytown, following the San Juan river to Lake Nicaragua, through the lake, and thence across the land to Brito. Thus, the United States became definitely committed to the Nicaragua route, then complicated by British control of its eastern terminus through their protectorate over the Mosquito kingdom.

Viewing an isthmian canal as "virtually a part of the coastline of the United States" and alarmed by the energetic measures taken by French interests at Panama. United States leaders determined to change American policy. This attitude found expression of March 8, 1880, when the Select Committee on Interoceanic Canal of the house of representatives recommended a resolution by the congress declaring that any form of protectorate on this continent was contrary to the Monroe Doctrine (*q.v.*), that the United States asserts and maintains its right to possess and control any artificial means of isthmian transit, and that the president be requested to take steps to abrogate the Clayton-Bulwer treaty. This objective was supported by former President Grant, who, in Feb. 1881 publicly commended "an American canal, on American soil, to the American people."

4. Isthmian Canal Commission, 1899–1901

The French failure in 1889 rendered the canal situation less acute, requiring a new crisis to dramatize the issue. This was supplied by the historic voyage of the U.S.S. "Oregon" during the Spanish-American War in 1898, which emphasized the need for an isthmian canal. The result was that Pres. William McKinley, in 1899, appointed an Isthmian Canal commission, with Rear Admiral John G. Walker, U.S.N. (ret.), as president, to investigate all canal routes, particularly Nicaragua and Panama, and to recommend the most practicable. In its first report on Nov. 16, 1901, the commission estimated the cost of a Nicaragua canal at $189,846,062, and Panama at $144,233,358; and the value of the French holdings at $40,000,000. But as the French company was demanding $109,141,500 for its property, the total estimate for Panama was $253,374,858. Because of the excess cost for a canal at Panama, it recommended Nicaragua as the only practicable route.

5. U.S. Diplomacy, 1901–03

Meanwhile, the United States government, under the leadership of Secretary of State John Hay, negotiated with Great Britain the Hay-Pauncefote treaty of Nov. 18, 1901, which superseded the Clayton-Bulwer treaty and recognized the exclusive right of the United States to construct, regulate and manage any Isthmian canal. It further adopted the principal points in the Convention of Constantinople (1888) for the Suez canal as rules for the operation and neutralization of the American canal. These rules provided that the canal should be free and open to vessels of commerce and of war of all nations on terms of entire equality, with tolls that were just and equitable. The United States was also authorized to protect the canal against lawlessness and disorder.

The New Panama Canal company in Paris, reacting to the commission's recommendation for Nicaragua, on Jan. 9, 1902, cabled Admiral Walker its readiness to accept the United States offer of $40,000,000 for its holdings. Thereupon the commission, in a supplementary report on Jan. 18, 1902, canceled its first recommendation and recommended Panama as the most practicable and feasible route for an Isthmian canal. Describing the previous concessions from Colombia as unsatisfactory and insufficient, the commission emphasized the necessity for obtain-

ing in perpetuity the grant of a sufficient strip of territory across the isthmus for canal purposes. Promptly transmitted to the congress by Pres. Theodore Roosevelt, the new recommendation started a memorable debate in the congress known as the "battle of the routes." Out of it came the basic law for construction of the Panama canal approved June 28, 1902, known as the Spooner act.

This law authorized the president to acquire all French holdings including its Panama railroad stock at a cost not exceeding $40,000,000, to obtain from Colombia perpetual control of a strip of land for the maintenance, operation and protection of the Panama canal and railroad, and then, through the Isthmian canal commission, to construct the Panama canal. The type contemplated by the act was high-level, with Atlantic locks and dams at Bohio to form a Lake Bohio. Provision was also made that in event of failure to obtain an adequate treaty within a reasonable time, the president should proceed with construction of a Nicaragua canal.

In harmony with the act, Tomás Herrán, Colombian chargé d'affaires in Washington, after many months of arduous labour, succeeded in negotiating a most favourable treaty for his country—the Hay-Herrán treaty of Jan. 22, 1903, which was ratified by the United States senate on March 17, 1903.

Unfortunately, this treaty became involved politically in Bogotá. The Colombian senate, called into special session on June 20, 1903, for its ratification, rejected the treaty against urgent pleadings by Herrán in Washington and U.S. Minister Arthur M. Beaupré in Bogotá.

The Panama Revolution, 1903.—Panamanian leaders, fearing that after all Panama might still lose the canal to Nicaragua, determined to avert that possibility. A Panamanian agent was then dispatched to Washington to obtain promise of help for a plan of revolt. While no promise was given, the warship U.S.S. "Nashville" appeared at Colón on Nov. 2, 1903. On the following day an uprising occurred. Colombian troops were prevented from crossing the isthmus to put down the rebellion and independence was proclaimed under the leadership of Manuel Amador. It was recognized, first by the United States, second by France, and soon afterward by other countries.

Then followed negotiation of the second basic canal convention, the Hay-Bunau-Varilla treaty of Nov. 18, 1903, with Panama instead of Colombia. By this treaty, in harmony with the Spooner act, United States was granted in perpetuity exclusive use, occupation and control of the Canal Zone. Significantly the United States could exercise all sovereign powers to the entire exclusion of the exercise of such powers by Panama. That country was to receive $10,000,000 in cash and a $250,000 annuity to begin nine years after ratification of the agreement. The proclamation of this treaty on Feb. 26, 1904, sealed the choice of the Panama route.

A few days later, on March 8, 1904, President Roosevelt recognized the contributions of Admiral Walker by appointing him as the first chairman of the first Isthmian Canal commission for the construction of the Panama canal. One member, Maj. Gen. George W. Davis, U.S. Army (ret.), was the first governor of the Canal Zone. John F. Wallace, a leading railroad engineer, not experienced in "frontier" work, was chosen as the first chief engineer.

The Canal Zone was formally acquired on May 4, 1904—a day subsequently celebrated annually in the zone as Acquisition day.

6. Building the Canal, 1904–14

Work under the United States started haltingly. Because of public clamor to "make the dirt fly," the commission weakened in its stand for thorough and comprehensive preparation and started work without proper equipment or plans. Though valuable time was thus lost, the commission made important contributions. It organized the Canal Zone government, started sanitation under the supervision of William Crawford Gorgas (*q.v.*), and recruited the nucleus of an engineering and construction force.

Resigning on March 30, 1905, the Walker commission was succeeded by a new one headed by Theodore P. Shonts, a prominent railroad executive, with Wallace continuing as chief engineer. Though for a time conditions improved, Wallace, on June 26, 1905, suddenly resigned, throwing the working forces into confusion.

Battle of the Levels, 1904–06.—Of the difficulties of this period the gravest was increasing uncertainty as to the type of canal that should be built—the high-level lock type contemplated by the Spooner act or a canal at sea level as had been suggested by Wallace in 1904.

Fortunately, President Roosevelt selected a great railroad builder, executive and explorer, John F. Stevens, as the new chief engineer. Stevens' qualifications were unique. He had read everything available on the Panama canal since the time of Philip II, discovered Marias pass in Montana, built railroads in the Rocky mountains and supervised open mining operations in Minnesota. Thus, he had observed what occurs when the delicate balances of nature are upset, understood the hazards of cutting a ship channel through mountains, and was experienced in personnel and construction problems in undeveloped terrain.

Arriving on the isthmus on July 25, 1905, at a time of chaos, he rescued the project from possible disaster. He promptly provided housing for employees, established commissaries, adopted sanitation measures, ordered equipment and double-tracked the Panama railroad. After planning the transportation system for Culebra cut excavation and for relocation of the railroad to higher ground on the east side of the canal, moving the Atlantic locks site from Bohio to Gatun to form Gatun lake, recruiting competent leaders and forming the organization for building the Panama canal, he found progress hampered because of delay on the decision as to type of canal, then being considered by an International Board of Consulting Engineers, of which General Davis was chairman.

In its report of Jan. 10, 1906, this board split—the majority of eight members headed by General Davis and including five Europeans, voting for sea level; and the minority, five Americans (Alfred Noble, Henry L. Abbot, Frederic P. Stearns, Joseph Ripley and Isham Randolph), voting for the lock type.

The controlling features of the lock plan recommended by the minority were a dam at Gatun creating Gatun lake 85 ft. high as the summit level and Culebra cut. Parallel flight locks were to be provided: three-lifts at Gatun, one-lift at Pedro Miguel, and two-lifts at Sosa hill, the last two sets being separated by an intermediate Sosa lake. Though of different lock arrangement, this plan was the same type as recommended in 1901 by the Walker commission.

Testifying before congressional committees in Washington in January and June 1906, and using the De Lépinay arguments of 1879, Stevens supported the high-level plan with a conviction that no one could shake, and strongly opposed the sea-level plan recommended by the majority of the International Board of Consulting Engineers. In the end, with the support of President Roosevelt, Secretary of War Taft, and the Isthmian Canal commission, the views of Stevens prevailed against strenuous opposition concerned primarily with questions of "vulnerability." Congress, by act approved June 29, 1906, adopted the high-level lake and lock plan as proposed by the minority. This was the great decision in building the Panama canal.

The transit since 1914, in both peace and war, of thousands of vessels of various types, completely establishes the wisdom of that decision. It secured for Stevens, who was mainly responsible for bringing it about, great fame as the basic architect of the Panama canal. This fact was recognized in Oct. 1962 at the time of the opening of the Thatcher Ferry bridge by the dedication of a handsome memorial honoring the great engineer.

Pacific Lock Location Question, 1906–08.—Though the high-level plan, as approved by the minority of the International Board of Consulting Engineers, placed all Atlantic locks at Gatun it divided the Pacific locks into two sets. Stevens, early in 1906 before adoption by congress of the minority report, recognized the Pacific lock arrangement as faulty and recommended consolidation as a needed change. Eventually, on Aug. 3, 1906, Stevens approved a plan placing all Pacific locks in three-lifts south of Miraflores with the terminal dam and locks between two hills, Cerro Aguadulce on the west side of the sea level section of the canal and Cerro de Puente on the east side, a location later recognized by Lieut. Col. George W. Goethals as offering the best site. This arrangement would have enabled lake-level navigation from the Atlantic locks to the Pacific, with a summit level anchorage at the Pacific end of the canal.

Regrettably, Stevens was under great pressure to start active construction. Advocates of the sea-level proposal, stung by their defeat in congress, and also opponents of any canal at all, were ready to take advantage of any change in the approved program as evidence of weakness in the high-level plan. Together, these two forces represented a political and economic power that could not be ignored.

Stevens' foundation investigations, necessarily made in haste proved unsatisfactory, and he did not dare to jeopardize the project by further delay. On Aug. 23, 1906, apparently confident that this important question would rise again, he voided his plan but retained it on file, and proceeded with the approved plan for separating the Pacific locks, which he did not personally favour.

Later, after Stevens left canal service, Maj. William L. Siben, a member of the commission with a keen appreciation of marine needs in the design of navigational works, made more extensive explorations. Finding adequate foundations, he likewise, on Jan. 31, 1908, recommended the consolidation of all Pacific locks in three-lifts at Miraflores to provide a Pacific terminal lake, but his well-reasoned proposal was not approved, and the canal was completed with two sets of Pacific locks, separated by Miraflores lake.

Construction and Completion, 1907–14.—With canal type decided, construction organization effected, and a greater part of the plant installed by July, 1906, real progress started. Thus, Stevens was able to assure the press in 1906 that the canal would be completed in 1914 and formally opened by Jan. 1, 1915.

On Jan. 30, 1907, after having brought design and construction to a point where work was in "full swing" and success a certainty, Stevens submitted his resignation to the president. Despite that action, however, Roosevelt, on Mar. 4, 1907, in recognition of his tremendous contributions, appointed him as chairman of the Isthmian Canal commission, making Stevens the first to hold the combined positions of chairman and chief engineer.

Stevens was succeeded by Lieutenant Colonel Goethals, an outstanding army engineer, who, with his associates, civilian as well as military, ably brought the project to completion substantially in accord with the Stevens plan. Such changes as were made, though important, were nonbasic. These included widening the bottom of Culebra cut from 200 ft. to 300 ft., increasing usable lock dimensions to a width of 110 ft. and length of 1,000 ft., with a depth to permit passage of ships drawing 40 ft. in salt water, rerouting the Panama railroad around Gold hill, relocation of locks from Sosa hill to Miraflores, and redesign of Gatun dam.

Other members of the Isthmian Canal commission on April 1, 1907, were Maj. David D. Gaillard, Major Sibert, naval civil engineer Harry H. Rousseau, Lieut. Col. William C. Gorgas, Jackson Smith and J. C. S. Blackburn. Later changes included Lieut. Col. H. F. Hodges (1908–14) to succeed Smith, Maurice H. Thatcher (1910–13) to succeed Blackburn and Richard L. Metcalfe (1913–14) to succeed Thatcher. Gaillard died on Dec. 5, 1913, without a successor.

The building of the Panama canal, one of the greatest engineering feats in the world, was indeed a monumental and unprecedented achievement. Its subsequent success, in both peacetime and during war, entitle all who, in significant manner, participated in its planning, construction, sanitation and civil administration, to the highest honours. The canal was first opened to traffic on Aug. 15, 1914.

7. *Principal Engineering and Construction Projects After 1914*

The Isthmian Canal commission, abolished on April 1, 1914, was succeeded by a highly centralized permanent operating organization authorized by the Panama Canal act of 1912, known simply as The Panama Canal. Though free, under the law, to choose the governor from any source, Pres. Woodrow Wilson, in recognition of the services of Colonel Goethals, appointed him as the first governor of The Panama Canal.

The canal was launched into its era of operation under Governor Goethals, who served until late 1916 after the early slide crises. Goethals chose his principal engineer assistant as his successor and established a tradition of succession, by advancement, that lasted until 1952.

Madden Dam and Power Project, 1919–35.—Faced with the problems of an unusually dry season, 1919–20, requiring conservation of water for lockages and maintenance of channel depths, and later by a great flood in 1923, endangering the waterway, together with growing traffic, congress authorized the first important step toward increasing canal capacity, the Madden Dam and Power project Completed in 1935, it provided more water for lockages, controlled floods, improved navigation and supplied additional power.

Third Locks Project, 1939–42.—The second step toward greater capacity was for a third set of locks. Because of naval needs, in the critical period preceding World War II, congress, on administrative recommendations, authorized the Third Locks project, at a cost not to exceed $277,000,000. The proposed layout contemplated a new set of larger locks, 1,200 ft. long and 140 ft. wide, with 45 ft. navigable depth, near each of the existing locks but at some distance away with the new locks joined with existing channels by means of by-pass channels. At the Atlantic end, the project duplicated existing arrangements. At the Pacific end, however, the proposed channel, in addition to duplicating its faulty layout, contained three sharp bends of 29°, 47° and 37° in succession from north to south. Work started in 1940 and was pushed vigorously until suspended by the secretary

of war in May 1942 because of shortage of ships and materials more urgently needed elsewhere for war purposes. No excavation was accomplished at Pedro Miguel; that at Gatun and Miraflores was substantially completed. A total of $76,357,405 was expended.

Terminal Lake—Third Locks Plan, 1942–43.—Fortunately, suspension of work on the Third Locks project occurred while there was still time for canal officials to re-examine it in the light of needs demonstrated by war-operating experience. These studies served to emphasize that the separation of the Pacific locks and failure to provide a summit-level lake at the Pacific terminus were fundamental errors of design, with Pedro Miguel locks as the principal obstruction to optimum canal operating conditions.

Out of the studies, including an evaluation of the sea-level idea, grew what proved to be the first comprehensive proposal for the economic increase of capacity and operational improvement of the Panama Canal—the Terminal Lake-Third Locks plan. It proposed the physical removal of Pedro Miguel locks, consolidation of all Pacific locks near Aguadulce, elevation of the intermediate Miraflores lake water level from 54 ft. to that of Gatun lake to create a summit-level anchorage at the Pacific end of the canal to match, as far as possible, that in the Atlantic end. It would also include raising the summit level to its highest feasible height of approximately 92 ft., enlarging Gaillard cut and constructing a set of larger locks. Essentially, this was the same plan originated by De Lépinay, and later recommended by Stevens and Sibert.

Officially submitted and publicly presented in the Caanl Zone, it aroused wide interest among engineers and maritime agencies, including the secretary of the navy, who, on Sept. 7, 1943, submitted it to the president. Soon after, in 1944, it was approved in principle by the governor of The Panama Canal and recommended to the secretary of war for thorough investigation, and later, in 1945, it was approved in general before the congress by a succeeding governor for the major modification of the existing waterway in preference to completing the original Third Lock project. A 1949 congressional investigation reported that it could be accomplished at comparatively low cost.

The Terminal Lake-Third Locks plan, being an enlargement of the existing facilities that does not call for additional land or waters, is covered by current canal treaties and does not require negotiation of a new one, a paramount diplomatic consideration.

Sea Level Plan, 1945–47.—The spectacular advent of the atomic bomb in 1945 injected new elements into the canal picture. At the request of Canal Zone authorities, congress enacted public law 280, 79th congress, approved Dec. 28, 1945, authorizing the governor of The Panama Canal to make a comprehensive investigation of the means for increasing its capacity and security to meet future needs for interoceanic commerce and national defense, including consideration of canals at other locations. This was the first time the terms "security" and "national defense" had been embodied in any Panama Canal statute.

The report of the inquiry with security and national defense as paramount considerations, recommended only the sea-level plan for major canal construction, initially estimated in 1947 to cost $2,483,000,000, a figure later substantially increased. Though the report covered the Terminal Lake-Third Locks plan, which it did not recommend, it offered a relatively minor program for improvement of present installations as a preferred alternative to the major operational improvement of the existing waterway as recommended in 1943 by the secretary of the navy.

With the exception of the two canal terminals, the 1947 sea-level plan would provide a virtually new Panama canal of 60 ft. minimum depth in navigation lanes and of 600 ft. width between sloping sides at a depth of 40 ft. on a new alignment somewhat removed from the present channel. The plan also provides a tidal lock (200 ft. by 1,500 ft.) and a navigable pass at the Pacific end, many miles of flood control dams on both sides of the projected canal, diversion channels and spillways. Some of its features are not covered by current international conventions and would require a new treaty with Panama, with further concessions, attendant indemnity and increased annuity charges.

The report of the investigation failed to receive presidential approval. Transmitted to the congress on Dec. 1, 1947, without comment or recommendation, its submission, however, led to a recurrence of the 1902 and 1906 debates over route and type with almost identical arguments, but on the basis of the newer term, "security," rather than the old term, "vulnerability."

In voluminous discussions, many leading engineers, nuclear scientists and other experts challenged the assumptions on which the principal 1947 recommendations and estimates rested. The congress took no action until 1957, when an independent inquiry into the entire subject of increased facilities for interoceanic transit was authorized and a special board of consultants appointed.

Sea Level Plan, 1964–70.—Its final report of June 1960 included estimates for the Terminal Lake-Third Locks plan ($1,020,900,000) and the Sea-Level plan ($2,537,000,000) exclusive of any Panamanian indemnity. The board emphasized that the Sea-Level plan would present many constructional problems including interruption to traffic. A plan for a lake and lock canal at Nicaragua ($4,095,000,000) as an alternate route was submitted without definite recommendation. This report, otherwise inconclusive, recommended the entire canal situation be reviewed in 1970 or earlier if warranted. Congress, on administrative request, by act approved Sept. 22, 1964 (78 Stat. 990), authorized further investigations to determine the feasibility and most suitable site for a canal at sea level between the Atlantic and Pacific oceans, and subsequently fixed the reporting date as Dec. 1, 1970.

Meanwhile, the 1947 report served to focus governmental attention on administrative problems of the Panama canal.

8. Reorganization and Policy Determination.

On June 30, 1948, the Panama Railroad company was reincorporated as a federal corporation and, on Feb. 28, 1949, the house of representatives authorized an investigation into the organization and financial aspects of the Panama canal enterprise.

All recommendations growing out of this inquiry were implemented except that for transfer of responsibility for canal supervision from the secretary of the army to the secretary of commerce, which the president delayed for further study. The resulting Act of Congress, public law 841, 81st congress, approved Sept. 26, 1950, known as the Thompson act, created the Panama Canal company and the Canal Zone government. Effective July 1, 1951, the act started major administrative changes, including a break in 1952 in the traditional selection for appointment as governor. The law requires that transit tolls be established at rates to operate the canal enterprise on a self-sustaining basis, a fundamental principle in canal policy with far-reaching implications for its future.

9. Panama-U.S. Relations.

Because of the previous history of Panama as a land of endemic revolution, the framers of the 1903 treaty, in order to guarantee political stability essential for future efficient operations of the waterway, insisted on its perpetuity, sovereignty and protective clauses. Subsequent events fully substantiated the wisdom of these 1903 treaty provisions, which remain largely unchanged. The canal was no sooner opened to traffic in Aug. 1914, than the United States applied another provision of this treaty, that of obtaining additional lands. During World War I, in which Panama participated, the United States took possession of several areas of land, and in 1919 acquired a group of islands. Friction over this and other issues led to an attempt in 1926 to revise the convention of 1903, but Panama refused to sign any agreement. The attempt was renewed in Oct. 1933, when Pres. Harmodio Arias conferred in Washington with the U.S. president. Their basic agreement was refined and incorporated in four treaties, signed March 2, 1936. At the insistence of Panama, the United States was relieved of the obligation to guarantee the independence of the republic and renounced the right to acquire any additional lands and waters outside the Canal Zone. By limiting the use of the zone commissaries to persons employed on the canal and the railroad, the negotiators sought to dissipate a long-standing grievance. It was agreed that Panama was to operate port facilities at Colón and Panama City, that equal opportunities between Panamanian and American employees should be observed, and that the United States should increase the annuity from $250,000 to $430,000. Agreement was also reached on constructing a transisthmian highway. The weakening of the diplomatic structure was further advanced in the 1955 Eisenhower-Remón treaty, which provided for the annual U.S. payment to Panama to be increased to $1,930,000, for equal pay for equal work to Panamanians and U.S. citizens (effective 1958), for Panamanian concerns to be placed on an equal footing with U.S. companies in contract bidding, for the construction of the Thatcher Ferry bridge across the Pacific end of the canal,

and for the transfer of certain real estate properties to Panama; the U.S. obtained a 15-year lease for a military base at Rio Hato. The effect of these treaties has been the withdrawal of canal activities to the limits of the Canal Zone and the curtailment of activities within the zone.

The policy of the Canal Zone authorities in the ensuing years was to improve the living conditions of the Panamanians working in the zone and to make changes in the physical features of the canal that would benefit trade in general and Panama's well-being in particular. But these changes lacked the emotional appeal that was attached to the display of the Panamanian flag.

In 1958 and in 1959 the Canal Zone was invaded by Panamanians intent on raising their flag there, and in the latter year their attempt was turned back with injuries. President Eisenhower reviewed the Panamanian claim with sympathy, and in 1960 agreed to the raising of the Panamanian emblem at one point in the Canal Zone as evidence of titular sovereignty (never defined). From this beginning the United States made further concessions until the two flags were displayed almost equally.

A dispute over this very concession between Panamanian and U.S. students at the Balboa high school on Jan. 9, 1964, caused considerable deterioration in relations between the two countries. The subsequent mob assaults on the Canal Zone produced a number of deaths, injuries by the score, and great property damage requiring the use of U.S. army units and a temporary replacement of civilian by military rule in the Zone. The U.S. embassy was evacuated, and many Americans left their homes for the sanctuary of the Canal Zone. Normal diplomatic relations were restored on April 3. In December U.S. Pres. Lyndon B. Johnson proposed the negotiation of three new treaties with Panama concerning the existing canal, a new canal at sea level, and U.S. bases, and both countries appointed negotiators for such purpose. Late in 1965 the presidents of the U.S. and Panama announced that they had agreed to abrogate the 1903 treaty and that the new treaty would recognize Panama's sovereignty over the Canal Zone.

In June 1967 the two presidents announced the completion of the negotiations but the treaties were not signed because of public opposition in Panama and congressional opposition in the United States. This outcome, together with growing traffic, led to strong demands in the Congress for the major operational improvement and increase of capacity of the existing canal according to the Terminal Lake-Third Locks proposal, which does not require a new treaty with Panama.

See PANAMA: *History* for further aspects of Panama-U.S. relations; *see* also references under "Panama Canal" in the Index.

Bibliography.—Isthmian Canal Commission, 1899–1902. *Reports:* International Board of Consulting Engineers, 1906, *Report;* Board of Consultants, Isthmian Canal Studies, *Report on Long Range Program for . . . Panama Canal* to H.R. Committee on Merchant Marine and Fisheries dated June 1, 1960 (H. Rept. 1960, 86th Congress); Governor of The Panama Canal, *Report . . . on Means of Increasing Capacity* March 16, 1939 (H. Doc. 210, 76th Congress); "Report on Proposal for Elimination of Pedro Miguel Locks, Panama Canal, Jan. 17, 1944," *Congressional Record*, vol. 102, pt. 8, p. 10757 (June 21, 1956); "Report on Isthmian Canal Studies under Public Law 280, 79th Congress 1947," summarized in *Am. Soc. Civ. Engs. Trans.*, vol. 14, pp. 607–790 with discussion, pp. 797–906 (1949); Bureau of the Budget, "Panama Canal and Panama Railroad," *Report . . . on Organization and Operation*, Jan. 31, 1950 (H. Doc. 460, 81st Congress); Panama Canal Company—Canal Zone Government, *Annual Reports;* U.S. Department of State, *Foreign Relations: The American Republics*, annual volumes; *Report on United States Relations with Panama*, compiled by Rosita Rieck Bennett (H. Rept. 2218, 86th Congress); Comptroller General of the United States, *Annual Reports;* Hon. Daniel J. Flood, *Isthmian Canal Policy Questions* (H. Doc. 474, 89th Congress) (1966); Hon. Thomas E. Martin, "Panama Canal: Terminal Lake Modernization Program Derived from World War II Experience," *Congressional Record*, vol. 103, pt. 12, p. 16,504 (Aug. 29, 1957); Hon. Strom Thurmond, "Hand List of Panama Canal Treaty Statements," *Congressional Record*, 90th Congress, vol. 113 (Aug. 15, 1967), and other Senate addresses, 1967–68; Hon. Clark W. Thompson, "Isthmian Canal Policy of the United States—Documentation, 1955–64," *Congressional Record*, vol. 110 (Sept. 2, 1964); Miles P. DuVal, Jr., "The Marine Operating Problems, Panama Canal, and the Solution," *Am. Soc. Civ. Engs. Trans.*, vol. 114, p. 558 (1949); "Isthmian Canal Policy—An Evaluation," U.S. Nav. Inst. Proc., vol. 81, p. 263

(March 1955) ; Brig. Gen. Henry L. Abbot, *Problems of Panama Canal* (1907) ; Ira E. Bennett *et al., History of the Panama Canal* (Builders Ed.) (1915) ; Adolphe Godin De Lépinay de Brusly, "Note on the Practical Solution for Crossing the American Isthmus," Congrès International d'Etudes du Canal Interocéanique . . . du 15 au 20 mai, 1879, *Compte Rendu des Séances*, pp. 293–99 (1879) ; Miles P. DuVal, Jr., *Cadiz to Cathay*, 3rd ed. (1968), *And the Mountains Will Move* (1947) ; Almon R. Wright, "Defense Sites Negotiations Between the United States and Panama, 1936–1948," U.S. Department of State *Bulletin*, Aug. 11, 1952, p. 212; Maj. Gen. George W. Goethals *et al., The Panama Canal: an Engineering Treatise*, 2 vol. (1915) ; Maj. Gen. William C. Gorgas, *Sanitation in Panama* (1916) ; William I. Sibert and John F. Stevens, *The Construction of the Panama Canal* (1915) ; D. C. Miner, *The Fight for the Panama Route: the Story of the Spooner Act and the Hay-Herrán Treaty* (1940).—(M. DuV.; A. R. W.)

Captain Du Val. The first section that I shall deal with concerns the basic canal issues.

BASIC CANAL ISSUES

Mr. Chairman, the advantageous geographical location of the Central American Isthmus has been recognized since the Age of Discovery. Though the idea of constructing an interoceanic canal was first proposed by the Spanish in the early 16th century, it remained only a dream for nearly 400 years.

The only two sites on the Isthmus, where the Continental Divide is less than 600 feet, are Nicaragua and Panama. Because of this fact and conveniently located rivers, these two locations became the most favored routes for trans-isthmian crossings.

The first specific step toward an isthmian canal was the construction by U.S. interests of the Panama Railroad, 1849–55. That rail crossing gave the Panama route a great advantage in the competition between Nicaragua and Panama for the Isthmian Canal.

During the 19th century, the U.S. Government conducted extensive explorations of the isthmus from Tehuantepec in Mexico to the Atrato River in Colombia. My reference here is S. Ex. Doc. No. 15, 46th Congress.

As historically evolved, the Isthmian Canal policy of the United States has had two primary tasks: (1) determination of the best site for a canal; and (2) decision as to the best type of canal. The first resulted from what is known as the "battle of the routes;" the second, from the "battle of the levels."

Until 1902, the preferred site was Nicaragua for a canal of the lake-and-lock type which would utilize Lake Nicaragua and the San Juan River flowing into the Atlantic as parts of the project.

Meantime, while U.S. explorations were underway, French interests headed by Ferdinand de Lesseps, after his tremendous success at the Suez Canal, undertook the far more difficult task of constructing a canal at Panama, 1879–89. Though his great effort ended in a tragic failure, it nevertheless provided the foundation for much of what later followed.

The necessity for an Isthmian canal was dramatized to the people of the United States during the Spanish-American War when the U.S.S. *Oregon*, then on the Pacific Coast, rushed around South America and arrived off Cuba just in time to participate in the Battle of Santiago. The greatest service of her dramatic dash, however, was to

stress the necessity for an Isthmian canal as a vital element in U.S. seapower.

Soon afterward, the Congress, by act approved March 3, 1899, authorized an Isthmian Canal Commission to make a complete investigation of all routes, particularly those at Nicaragua and Panama. The members appointed to that body were distinguished and included Rear Adm. John G. Walker, one of the ablest naval officers of his time, as President of the Commission.

This commission, on November 16, 1901, recommended the Nicaragua site as offering the "most practicable and feasible route for an Isthmian canal" to be "under the control, management and ownership of the United States." I quote here from the Report of the Isthmian Canal Commission, 1899–1901, page 175.

After a decision by the French New Panama Canal Company to accept $40 million for its properties and concessions in Colombia, the commission, on January 18, 1902, reversed its previous position for Nicaragua and recommended the Panama site. This information comes from Sen. Doc. No. 123, 57th Cong., page 10.

THE PERPETUITY QUESTION

In recent publicity on the canal question, there has been much confusion and distortion concerning the perpetuity provisions in the 1903 treaty. These provisions did not originate with President Theodore Roosevelt, Secretary Hay, the first Minister of Panama to the United States, or any other interested party. It originated with the Isthmian Canal Commission.

That body, in its final report on January 18, 1902, made this highly important recommendation:

> The grant [for an Isthmian Canal] must not be for a term of years, but in perpetuity, and a strip of territory from ocean to ocean of sufficient width must be placed under the control of the United States. In this strip the United States must have the right to enforce police regulations, preserve order, protect property rights, and exercise such other powers as are appropriate and necessary.

The reference here is Sen. Doc. No. 123, 57th Cong., page 9.

Prior to this, on January 9, 1902, the House of Representatives, by an almost unanimous vote, had passed the Hepburn bill providing for the construction of an Isthmian Canal at Nicaragua.

The canal debate in the Senate started in earnest on June 4, 1902, when the Nicaragua canal bill of the House was read. My reference here is the Congressional Record, June 4, 1902, page 6267.

After days of extensive discussions, Senator John C. Spooner of Wisconsin, one of the ablest Members of the Senate, introduced an amendment to replace all the provisions of the bill for a Nicaragua canal under its enacting clause.

This amendment authorized the President to accomplish the following:

First, acquisition by treaty with Colombia of perpetual control of what is today the Canal Zone;

Second, construction and the perpetual maintenance, operation, and protection of the Panama Canal;

Third, perpetual maintenance and operation of the Panama Railroad;

Fourth, establishment of a government for the Canal Zone; and

Fifth, in the event of inability to obtain a satisfactory title to the property of the French Canal Company and control of the necessary territory from Colombia, the President was authorized to acquire perpetual control by treaty with Nicaragua and Costa Rica of the necessary territory for a canal at the Nicaragua site and to construct an Isthmian canal there.

The Spooner Act was adopted by the Senate after exhaustive consideration on June 19, 1902, by a vote of 67 to six. I reference here the Congressional Record, June 19, 1902, page 7074. It was passed by the House on June 26, by a vote of 260 to eight. This also comes from the Congressional Record, June 26, 1902, page 7441. Approved by the President on June 28, 1902, this act of the Congress supplied the authority the President needed to acquire the Canal Zone and to launch the Panama Canal.

HAY-HERRÁN TREATY WITH COLOMBIA, JANUARY 22, 1903

Under the authority of the Spooner Act, the President undertook the negotiation of the Hay-Herrán Treaty with Colombia, signed on January 22, 1903.

Although this treaty did not fully comply with the provisions of the Spooner law, it did grant to the United States a canal zone 5 kilometers in width on either side of the canal for a term of 100 years renewable at the sole and absolute option of the United States. I quote from the Hay-Herrán Treaty, article III.

Then a serious error was made. Instead of waiting for ratification of the treaty by Colombia, the U.S. Senate ratified it on March 17, 1903, far in advance of its consideration by Colombia.

The Colombian Congress met in an extraordinary session on June 20, 1903, and attention focused on Bogota. By mid-July it was apparent that the treaty would not be ratified and Panamanian leaders began planning for the secession of Panama from Colombia to enable Panama to make the canal treaty with the United States and thereby avoid the Isthmian Canal being constructed at the Nicaragua site.

When the Colombian Congress adjourned on October 31, 1903, without approving the Hay-Herrán Treaty, it was too late for remedial action.

Panama seceded from Colombia on November 3, 1903, and the United States extended de facto recognition 3 days later.

HAY-BUNAU-VARILLA TREATY, NOVEMBER 18, 1903

One of the first acts of the new Government of Panama was to appoint Philippe Bunau-Varilla, a former acting chief engineer of the old Panama Canal Company, as its first Minister in Washington with full powers to act on behalf of the Republic of Panama.

His immediate task was the negotiation of a new canal treaty between the United States and Panama, which was signed on November 18, 1903—the Hay-Bunau-Varilla Treaty.

In line with the major requirements of the Spooner Act, this convention granted perpetual control over the Canal Zone to the United

States to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power or authority. I quote here from the Hay-Bunau-Varilla Treaty, articles II and III.

The term, "perpetuity," is used seven times in the 1903 treaty leaving no doubt as to the intention of the framers of the treaty to secure "perpetual control" for the United States.

Ratified by Panama on December 2, 1903, it was ratified by the U.S. Senate on February 23, 1904, and proclaimed by the President on February 26.

At the time of ratification by the United States, there was still a strong group in the Senate for the Nicaragua Canal ready to seize upon any issue to defeat the treaty.

To avoid any possibility of a debate in the Senate on the attributes of sovereignty to be granted, the framers of the 1903 treaty had decided upon a grant of "sovereignty en bloc." My reference here is Earl Harding, "The Untold Story of Panama"; New York: Athene Press, 1950, page 39.

Because the term "if it were the sovereign" of the Canal Zone has been so often employed out of context by prosurrender advocates and their publicists in support of their arguments, it should be stressed that this expression coupled with the "entire exclusion" of the exercise of any sovereign powers by Panama in the Canal Zone was the device used by the framers of the 1903 treaty to make the grant of "sovereignty en block," which meant supreme powers for the United States in the Canal Zone.

Panama, on May 25, 1904, in a note to the Governor of the Canal Zone, recognized that its jurisdiction over the Canal Zone ceased. This marked the end of the "battle of the routes." My reference here is H. Doc. No. 474, 89th Congress, page 26.

The cost of acquiring the Canal Zone, as estimated on June 30, 1974, was $166,362,173, which makes it the most expensive territorial acquisition in the history of the United States. My reference here is Dr. Karl Brandt, and others, "Memorial to the Congress," 1975, page 2.

NOT LEASED OR RENTED

Two errors frequently encountered in current publicity is that the Canal Zone is "leased" territory and that the United States pays a "rental." The truth is that the Zone is not a "leased" area but a "grant in perpetuity" for the perpetual maintenance, operation, sanitation, and protection of the Panama Canal and that the United States pays Panama an "annuity" and not a "rental."

The original annuity of $250,000 was the obligation of the Panama Railroad to Colombia for its concession, which obligation was assumed by the United States in the 1903 treaty incident to its prospective ownership of the railroad that was needed for constructing the canal. This annuity was adjusted to $430,000 in the 1936 treaty to compensate for the devaluation of the gold dollar and again in the 1955 treaty it was gratuitously augmented by an additional $1,500,000 from State Department appropriations, with authorization for further increases in event of future devaluations. In 1976, the total annuity was $2,328,000, of which the Panama Canal Co. paid $518,718 and the State Department $1,809,282.

Far more significant, however, is the fact that in 1976 the total benefits to Panama from U.S. sources in the Canal Zone, including the annuity, was $243,197,000, which sum with other U.S. aid has given Panama the highest per capita income in all of Central America.

CONTEMPORARY VIEWS ON CANAL ZONE STATUS

In recent years there has been much confusion that could not have been better calculated to undermine public understanding of the validity of U.S. sovereign control over the Canal Zone. There is a vast difference between the views of the contemporaries of Theodore Roosevelt and the more recent ideas of those who have not delved deeply into Panama Canal history. What are some of the essential facts?

In the treaty of 1846 with New Granada, the United States guaranteed the "perfect neutrality" of the isthmus to prevent interruption of transit. My reference here is to the Moore memorandum of August 2, 1903.

In the instructions to the U.S. naval commander at Colon on November 2, 1903, he was directed to "maintain free and uninterrupted transit." My reference here is my book, "Cadiz to Cathay," Stanford University Press, 1940, page 330.

Panama, as previously stated, seceded from Colombia on November 3, 1903, won de facto recognition by the United States 3 days later, and on November 18, the Hay-Bunau-Varilla Treaty was signed.

On November 20, the Panama press published a dispatch from Washington that the treaty awarded "absolute sovereignty over the canal strip" to the United States and "meets in every way the requirements of the Spooner Act." My reference here is the Star & Herald, November 20, 1903.

In the Davis-Arias Treaty for the Mutual Extradition of Criminals of May 25, 1904, it refers to the "territories of the other"—the United States and Panama.

In the Davis-Arias provisional boundary agreement of June 15, 1904, reference is made to "all the territory ceded to the United States."

Senator ALLEN. Excuse me, Captain Du Val. All three members of the subcommittee have at this time to go to the floor.

When the cloture vote has been taken, I will have to stay on the floor to handle a bill that comes up thereafter. Senator Hatch, and I hope Senator Scott also, will be back at 12 o'clock. We would, then, like for you to wait until 12 o'clock in order to complete your testimony.

Senator SCOTT. Mr. Chairman, might I remain for just one moment for a question? I do have personal reasons why I can't come back.

I will pose one question to the witness, and then I will recess the meeting.

Senator ALLEN. That will be fine.

Senator Hatch will then be back at 12 o'clock and will stay until 12:45.

Senator HATCH. Captain Du Val, I might just be a little bit late, but I will be back as soon as I can.

Senator ALLEN. Senator Scott, you had a question for this witness?

Senator SCOTT. Yes, Mr. Chairman. I will continue very briefly.

Captain, your presentation so far is a position that has been mentioned by a number of other witnesses. It is a statement with which I am in substantial agreement.

But let me ask you what I asked Dr. Dozer. It would seem to me that some method needs to be devised to let the general public know the things that you are testifying to. I realize that we have the press with us at these meetings, but sometimes the details of the statements and the basic reasons do not receive public attention.

Captain Du Val you are familiar with the VFW and the American Legion?

Is the VFW, through its magazine or through other ways, letting its members throughout the country know of the concerns you are expressing?

Captain DU VAL. The members of the American Legion and the members of the VFW are very well informed.

Senator SCOTT. Are you working together in trying to disseminate information about this?

Captain DU VAL. We can work together on that.

Senator SCOTT. I would encourage you, to the extent that you can, to present factual information. The public, of course, can make up its mind on this.

But, as a recognized authority on Panama Canal history and interoceanic canal problems, I believe that you could have a tremendous influence on the people of the country with regard to this matter. I feel that the two major and other veterans organizations could let citizens know. I would encourage you to help them. Otherwise we are going to be faced with a situation in which the executive branch of the Government takes action that may not be ratified by two-thirds of the Senate, which is required, as you know, by our Constitution.

This might lead to some major problems if the Executive goes ahead and does obtain a treaty that has no validity. It would not have any validity unless ratified by two-thirds of the Senate, as you know.

But if some way could be found to let the public make their wishes known, that, I think, would be better. Polls have been taken on the views of the public generally, but I just wonder if the State Department and if the executive branch is aware of this.

As members of the VFW and the American Legion, I believe you have ways of letting these views be known. So, I would just encourage you in that direction.

Is there any further statement that you would want to make prior to coming back after our short recess?

Captain DU VAL. No, sir; I prefer to wait until we resume.

Senator SCOTT. Well then, the subcommittee will recess at this point.

[Recess taken.]

Senator HATCH [acting chairman]. The subcommittee will resume its sitting.

Captain Du Val, you may continue to the point where you left off.

Captain DU VAL. Thank you, Mr. Chairman.

In the classic work on the "The American Commonwealth" by Lord James Bryce, British Ambassador to the United States, that distinguished diplomat-lawyer-historian stated that Panama in the 1903 treaty "ceded" the Canal Zone in perpetuity. My reference here is

Bryce, "The American Commonwealth," revised edition, 1900, page 408.

In 1907, the U.S. Supreme Court interpreted the 1903 treaty as having "ceded" title over the Canal Zone to the United States. My reference is *Wilson* v. *Shaw*, 204 U.S. 24.

In President Taft's address on November 16, 1910, at a banquet in Panama City given by President Obaldia of Panama, Mr. Taft stated: "We are here to construct, maintain, operate, and defend a world canal, which runs through the heart of your country, and you have given us the necessary sovereignty and jurisdiction over the part of your country occupied by that canal to enable us to do this effectively." My reference here is the "Canal Record," volume IV, November 23, 1910, page 100.

In 1911, Adm. Alfred Thayer Mahan, the great naval historian and strategist, in his work on "Armaments and Arbitration," describes the 1903 convention with Panama as a "treaty of cession" and the Canal Zone as "American soil." My reference here is the "North American Review," March 1911.

In his memorandum on August 24, 1912, to accompany the Panama Canal Act establishing the permanent operating organization of the canal, President Taft made this statement: "In view of the fact that the Panama Canal is being constructed by the United States wholly at its own cost, upon territory ceded to it by the Republic of Panama for that purpose, and that, unless it has restricted itself, the United States enjoys absolute rights of ownership and control." My reference here is the Congressional Record, July 12, 1977, page E–4356.

In his Executive order on December 5, 1912, President Taft declared that "all land and land under water within the limits of the Canal Zone are necessary for the construction, maintenance, operation, protection, and sanitation of the Panama Canal." My reference here is the "Encyclopaedia Britannica," 1970.

In the Thomson-Urrutia Treaty of 1914–22, Colombia recognized the title to the Panama Canal and Railway as vested "entirely and absolutely" in the United States "without any incumbrances or indemnities whatever." My reference here is the Thomson-Urrutia Treaty of 1914, article I.

In 1920, the final report of the Joint United States-Panama Commission, organized under article VI of the 1903 treaty, published a list of all the former owners of land in the Canal Zone with the sums paid for their properties. My reference here is the final report of the Joint Commission, 1920.

In 1972, the U.S. Supreme Court reaffirmed its 1907 decision when it denied certiorari in a case before the U.S. Court of Appeals, 5th circuit, which held that the Canal Zone is an "unincorporated territory of the United States" over which the Congress exercises "complete and plenary authority." My reference here is *United States* v. *Husband* (Roach), 406 U.S. 935.

Such evidence as that above enumerated refutes published statements that the United States only purchased rights and not land or territory and that it only acquired rights and not sovereignty. It repudiates assertions that the United States "stole" the canal. Instead, the Canal Zone was constitutionally acquired and paid for three times: to Panama, the property owners, and Colombia.

The far-visioned leaders who formulated our Isthmian canal policy for exclusive U.S. sovereign control over the Canal Zone merit the highest praise for their wisdom. Such complete control by the United States was a major factor enabling the successful construction of the Panama Canal and its subsequent efficient operation in both peace and war. The sovereign control over the enterprise can be surrendered only at our peril.

TO THE CANAL QUESTION AS PRESENTING A CRUCIAL CHALLENGE

Mr. Chairman, as a responsible operating official in the Canal Government during the early years of U.S. involvement in World War II, I saw the performance of the Panama Canal during the most critical period in its history. Its unrestricted "operational flexibility" enable "rapid mobility" of combatant vessels and logistic support groups on their way to the Southwest Pacific. These were the main features that contributed so vitally to victory at that critical period of U.S. history.

The value of the Panama Canal in the defense of the United States and the entire Western Hemisphere has nowhere been better stated than in the June 8, 1977 letter to the President by four distinguished former Chiefs of Naval Operations that was forwarded to the Presiment by four distinguished Members of the Senate. My reference here is to the Congressional Record, June 30, 1977, pages H–6764, H–6771, and S–11344.

The historic policy of the United States as regards an Isthmian Canal has always provided for the protection of the huge investment involved by insisting upon sovereign control over the area in which it is situated. Thus, the question of the future status of the Canal Zone is a challenge to the Congress with far-reaching implications.

When the present uncertainties over the Canal Zone sovereignty question are cleared and the issue resolved, the way will be open for the next step in meeting the present challenge—that of the major inincrease of capacity and operational improvement of the great interoceanic link as a vital element in U.S. seapower and as an indispensable facility for interoceanic commerce.

LATEST SEA LEVEL PROPOSAL—AN EVALUATION

Mr. Chairman, another challenge in the canal question was the submission on July 22 to this subcommittee of what is known as the sea level project, a work that would actually require some form of tidal locks because of the tidal differences between the Atlantic and Pacific Oceans.

Although the wisdom of the original 1906 decision by the President and the Congress for the high-level lake and lock-type design is completely established, the idea of constructing a canal of the "sea level" type has been repeatedly resurrected.

The last major drive for it was in 1945–48 following the advent of the atomic bomb. It was opposed at that time by experienced atomic warfare authorities, engineers, geologists, navigators, and other experts. Nevertheless, its advocates are still active but are likewise

strongly opposed by qualified experts, this time by respected marine biologists and environmental organizations in addition.

The angle on which I am qualified to speak with some degree of authority is the marine operational. It is self-evident that unrestricted channels in the lakes of a modernized high-level canal enable better navigation than the necessarily restricted and much longer narrow channels of a sea-level project. The advantages of unrestricted lake navigation outweigh the minor hazards and time lost by passage through the locks.

When the more significant aspects of the interoceanic canal problem are examined objectively, the solution is not a sea-level project. It is the major modernization of the existing canal by completing the suspended third locks project modified as a result of World War II experience to provide for the removal of the bottleneck locks at Pedro Miguel and the consolidation of all Pacific locks south of Miraflores to create a summit terminal lake in the Pacific end of the canal to match the layout at Gatun. This would provide the best operational canal practicable of achievement, which in the words of former Gov. Harry Burgess of the Panama Canal would be, comparatively, both "simple and inexpensive." My reference here is House Document No. 139, 72d Congress, page 44.

Thank you.

Senator HATCH. Captain Du Val, we appreciate the efforts that you have put forth in preparing your statement and in coming here today.

Earlier here this morning, we heard testimony that the arrival of the U.S.S. *Nashville* created an American presence which prevented the landing of Colombian troops. This is the belief that is held by many.

Can you, as one of the preeminent historians concerning the canal, tell us whether the *Nashville*, whether the arrival of the *Nashville* prevented the landing of the Colombian troops?

Captain DU VAL. What you have just stated does not tell the whole story, The *Nashville* arrived about 8:30 on November 2 before the Panama revolution of November 3. About midnight on November 2, a Colombian war vessel, the *Cartagena* came in with 474 Colombian troops. At daylight on November 3, the commanding officer of the U.S. naval vessel called on the commanding officer of the Colombian vessel, made no statement, and did not interfere in any way.

About 8, the *Cartegena* got under way, passed by the *Nashville*, docked and about 8:30 discharged the 474 troops into Colon. There was no interference.

I have here [indicating] an excerpt from one of my books to justify what I have said.

Senator HATCH. Without objection, we shall place that material into the record at this point.

[Material follows:]

EXCERPT FROM CADIZ TO CATHAY

(By Miles P. Du Val, Jr.)

When the "Nashville" arrived, everything on the Isthmus was quiet. There is nothing to indicate that the commanding officer, Commander John Hubbard, even knew what the general plans were. The year 1903 had been a year of landings

in the Caribbean area, and naval personnel looked at this event simply as a routine matter in a series of unrelated events. In fact, the record of several years would not have caused anyone to assign any special significance to the "Nashville's" visit, least of all the personnel of the ship.

About midnight of the 2d, the Colombian gunboat "Cartagena" arrived with 474 Colombian soldiers under General Tovar. At daylight on the 3d the "Cartagena" was boarded by Commander Hubbard, who found that the troops were en route to Panamá; and, in the absence of instructions or of any knowledge concerning plans for a revolution, which of course had not started, he offered on objection to their landing. If he had had any instructions at all, under no circumstances would he had permitted this force to land.

The "Cartagena" got under way about 8:00 A.M., passed close to the "Nashville," docked, and about 8:30 A.M. the troops disembarked.[1]

Senator HATCH. So, you are saying that the presence of the *Nashville* did not stop the Colombian deliverance of troops by the vessel to quell the rebellion; is that right?

Captain DU VAL. That is correct.

The troops were landed in the presence of the *Nashville*. The *Nashville* took no action to prevent the landing.

Senator HATCH. Then, this is a misconception on the part of many people who believe the presence of the *Nashville* prevented the Colombian nation from landing its troops and preventing the uprising in Panama; is that right?

Captain DU VAL. The *Nashville* took no action.

Senator HATCH. OK. I think you have been very helpful today. We appreciate your testimony.

Our next witness will be Mr. Donald H. Schwab, director, National Legislative Service, Veterans of Foreign Wars of the United States.

We are happy to welcome you to our hearings here today.

TESTIMONY OF DONALD H. SCHWAB, DIRECTOR, NATIONAL LEGISLATIVE SERVICE, VETERANS OF FOREIGN WARS OF THE UNITED STATES, ACCOMPANIED BY PHELPS JONES, DIRECTOR, NATIONAL SECURITY AND FOREIGN AFFAIRS, AND WILLIAM SHEEHAN, LEGAL COUNSEL, NATIONAL VETERANS SERVICE, VETERANS OF FOREIGN WARS OF THE UNITED STATES

Mr. SCHWAB. Thank you, Mr. Chairman.

The gentleman accompanying me on my right, and your left, is Colonel Phelps Jones, U.S. Army, retired, our director of national security and foreign affairs; and the gentleman on my left, and your right, is Captain J. William Sheehan, U.S. Navy, retired, our legal counsel for our National Veterans Service.

Thank you for the privilege of appearing before this distinguished subcommittee to present the views of the Veterans of Foreign Wars of the United States with respect to the constitutional issues of treaties and the disposition of territories of the United States.

My name is Donald H. Schwab, and my title is director of the national legislative service of the Veterans of Foreign Wars of the United States.

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[1] *Foreign Relations, 1903*, p. 269 (US).

Mr. Chairman, these hearings have been necessitated by apparent disagreement as to the constitutional authority of the executive branch and the legislative branch of the U.S. Government regarding the ratification of treaties and the disposition of territories of the United States.

Although these hearings address specific issues, it is incumbent upon me at this time to reiterate that the Veterans of Foreign Wars of the United States is unalterably opposed to the giveaway of the Panama Canal and, further, that the United States' operation, control, and defense of the canal are nonnegotiable. Appended to my testimony is a copy of Resolution No. 414, entitled, "U.S. Sovereignty over the 'United States Canal' located on the Isthmus of Panama," which was passed by the voting delegates to our last National Convention, representing our more than 2.3 million members of the Veterans of Foreign Wars and its ladies auxiliary.

Senator HATCH. Without objection, we will place that material into the record at this point.

[Material follows:]

VFW RESOLUTION

RESOLUTION NO. 414—U.S. SOVEREIGNTY OVER THE "UNITED STATES CANAL" LOCATED ON THE ISTHMUS OF PANAMA

Whereas, Article II of the 1903 Convention between Panama and the United States, as modified in part by the 1936 Treaty between the two Governments, states:

ARTICLE II

The Republic of Panama grants to the United States in perpetuity the use, occupation and control of a zone of land and land under water for construction, maintenance, operation, sanitation, and protection of said canal of the width of ten miles extending to the distance of five miles on each side of center line of the route of the Canal to be constructed; the said zone beginning in the Caribbean Sea three miles from mean low water mark extending to and across the Isthmus of Panama into the Pacific Ocean to a distance of three marine miles from mean low water mark with the proviso that the cities of Panama and Colon and the harbors adjacent to said cities, which are included within the boundaries of the zone above described shall not be included within this grant. . . .

The Republic of Panama further grants in like manner to the United States in perpetuity all islands within the limits of the zone above described and in addition thereto the group of small islands in the Bay of Panama, named Perico, Naos, Culebra and Flamence; and

Whereas, the United States of America has fully met its obligations to Panama under existing treaty arrangements and, moreover, has efficiently and responsibly accommodated an ever-increasing number of transits and amount of tonnage through the canal; and

Whereas, the revolutionary government of Panama, a product of coup d'etat, has since June 1971, under the guise of seeking new canal treaty arrangements, undertaken a bitter and sustained campaign of anti-American propaganda fueled in large part by Cuban and Soviet Communists; and

Whereas, given the emotionally irrational situation in Panama, a political/psychological "timebomb" is being consciously fabricated by the revolutionary government of Panama set to explode to the detriment of the United States and the world shipping community, as was the case in the abortive meeting of the UN Security Council in Panama and the subsequent threat to the U.S./UN Ambassador and the Panamanian dictator's "red carpet treatment" in Cuba; and

Whereas, due largely to our unswerving V.F.W. support, more than one-third of the U.S. Senate, led by Senators Thurmond (S.C.) and McClellan (Ark.), has gone on record in opposition to the unprincipled "Statement of Principles"

signed by the Administration and the Panamanians, and a parallel effort is being conducted in the House of Representatives led by Congressman Dan Flood (Pa.) : Now, therefore, be it

Resolved, by the 77th National Convention of the Veterans of Foreign Wars of the United States, That:

(a) U.S. operation, control and defense of the Canal are non-negotiable.

(b) Tensions relating to the administration of the Canal Zone be resolved on the spot without disturbing present treaty arrangements.

(c) U.S. citizens and employees in the Canal Zone continue to meet their responsibilities under U.S. Sovereignty.

(d) The foregoing position be again communicated to both the President and the Congress.

(e) The Panama Canal Zone send to the Congress of the United States a delegate such as is done by Puerto Rico, the District of Columbia, and the Virgin Islands.

Mr. SCHWAB. As I am sure you are aware, during the national security debate between then-President Ford and candidate Governor Carter, on October 6, 1976, candidate Carter stated:

I would never give up complete control or practical control of the Panama Canal Zone, but I would continue to negotiate with the Panamanians.

Again, on April 14, 1977, when President Carter addressed the Permanent Council of the Organization of American States, in referring to challenges that face us in the future, President Carter stated:

One that addresses itself to us is the Panama Canal. In the first days of my own Administtration, just a few weeks ago, I directed a new approach to our negotiations with Panama on a new Canal treaty. In the line of changes which I discussed before, the treaty of 1903, which combines (defines) our relationship with Panama on the Canal, is no longer appropriate or effective . . . I am firmly committed to negotiate in as timely a fashion as possible a new treaty which will take into account Panama's legislative needs as a sovereign nation and our own interests and yours in the efficient operation of a neutral Canal, open on a nondiscriminatory basis to all users.

The Congress of the United States and, in particular this august panel, has been the watchdog and guardian of our Constitution for more than 200 years, and all Members are thoroughly conversant with the Constitution of the United States. However, in view of ongoing negotiations, certain portions thereof must be stated and restated as often as is necessary.

Article IV, section 3, clause 2 of the U.S. Constitution states:

(The President) shall have the power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur . . .

Article IV, section 3, clause of the U.S. Constitution states:

The Congress shall have the power to dispose of and make all needful rules and regulations respecting the territory or property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

It would appear at this time to be both prudent and necessary to look behind the Constitution to the rationale of the framers thereof with respect to the separation of powers as enunciated in the following Federalist Papers.

First, The Federalist No. 51, authored by either Alexander Hamilton or James Madison, states, among other things:

In order to lay a due foundation for that separate and distinct exercise of the different powers of government, which to a certain extent is admitted on

all hands to be essential to the preservation of liberty, it is evident that each department should have a will of its own; and consequently should be so constituted that the members of each should have as little agency as possible in the appointment of the members of the others.

It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary.

In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.

But it is not possible to give to each department an equal power of self-defense. In republican government, the legislative authority necessarily predominates. The remedy for this inconveniency is to divide the legislature into different principles of action, as little connected with each other as the nature of their common functions and their common dependence on the society will admit.

Second, the "Federalist No. 64" by John Jay opines:

There are a few who will not admit that the affairs of trade and navigation should be regulated by a system cautiously formed and steadily pursued; and that both our treaties and our laws should correspond with and be made to promote it. It is of much consequence that this correspondence and conformity be carefully maintained and they who assent to the truth of this position will see and confess that it is well provided for by making concurrence of the Senate necessary both to treaties and to laws.

Third, the "Federalist No. 75" by Alexander Hamilton, and perhaps one of the most important, states:

The President is to have power, "by and with the advice and consent of the Senate, to make treaties, provided two thirds of the senators present concur."

Though this provision has been assailed, on different grounds, with no small degree of vehemence, I scruple not to declare my firm persuasion, that it is one of the best digested and most unexceptionable parts of the plan. One ground of objection is the trite topic of the intermixture of powers; some contending that the President ought alone to possess the power of making treaties; others, that it ought to have been exclusively deposited in the Senate.

With regard to the intermixture of powers, I shall reply upon the explanations already given in other places, of the true sense of the rule upon which that objection is founded; and shall take it for granted, as an inference from them, that the union of the Executive with the Senate, in the article of treaties, is no infringement of that rule. I venture to add, that the particular nature of the power of making treaties indicates a peculiar propriety in that union. Though several writers on the subject of government place that power in the class of executive authorities, yet this is evidently an arbitrary disposition; for if we attend carefully to its operation, it will be found to partake more of the legislative than of the executive character, though it does not seem strictly to fall within the definition of either of them.

The essence of the legislative authority is to enact laws, or, in other words, to prescribe rules for the regulation of the society; while the execution of the laws, and the employment of the common strength, either for this purpose or for the common defence, seem to comprise all the functions of the executive magistrate. The power of making treaties is, plainly, neither the one nor the other. It relates neither to the execution of the subsisting laws, nor to the enaction of new ones; and still less to an exertion of the common strength. Its objects are CONTRACTS with foreign nations, which have the force of law, but derive it from the obligations of good faith. They are not rules prescribed by the sovereign to the subject, but agreements between sovereign and sovereign. The power in question seems therefore to form a distinct department, and to belong, properly, neither to the legislative nor to the executive.

However proper or safe it may be in governments where the executive magistrate is an hereditary monarch, to commit to him the entire power of making treaties, it would be utterly unsafe and improper to intrust that power to an elective magistrate of four years' duration.

To have intrusted the power of making treaties to the Senate alone, would have been to relinquish the benefits of the constitutional agency of the President in the conduct of foreign negotiations.

It is the contention of the Veterans of Foreign Wars that the President of the United States and the Secretary of State have neither the authority to consummate new treaties nor abrogate existing treaties without the advice and consent of the Senate. Further, that disposition of territory rests with the Congress of the United States.

In view of the foregoing, it is earnestly requested that this subcommittee initiate whatever action deemed necessary to require the President to judiciously adhere to the provisions of the Constitution of the United States and, in particular, as such pertains to the United States Canal on the Isthmus of Panama.

This concludes my testimony and I thank you.

Senator HATCH. We appreciate the testimony that you have given, Mr. Schwab, but I think that there hearings today have disclosed something that really has been quite disturbing to me. As we have heard on the radio this morning, Mr. Linowitz, Mr. Bunker, and a representative of Panama are meeting with the President right now; rather, they began at 9:30 this morning.

It was shocking to me to find out that as of June 27 the Treasury Department was called into this matter. This leads me to believe that they are about ready to conclude a treaty. I think they are pretty close to doing it without having informed the American people as to what they are going to do.

Mr. SCHWAB. Mr. Chairman, without objection, I would like our Director of National Security and Foreign Affairs, Colonel Jones, to respond to the questions in this area.

Mr. JONES. I fully agree with the assessment you made.

Yesterday, along with representatives of other organizations, I met with Deputy Secretary of Defense, Duncan, and Chairman of the Joint Chiefs of Staff, Gen. George Brown. It was apparent to me, and I am sure to other representatives present, that this was a major administrative effort to prepare the way toward rapid movement toward a new treaty.

What has apparently slowed the earlier fast progress has been the report in the press that General Torrijos desires $1 billion down and $200 million until the year 2000; that is, each year until the year 2000.

Senator HATCH. $300 million a year.

Mr. JONES. I beg your pardon, Mr. Chairman. I stand corrected.

Both of our distinguished hosts yesterday claimed there was no foundation for these reports, but they have been reported.

Surely we know the current rental for the railroad of $2.3 million will go up and up very rapidly in the years ahead. This is for a whole variety of reasons.

We will, of course, stand by those in the Congress dedicated to maintaining a powerful U.S. position on the canal.

Senator HATCH. How would the Veterans of Foreign Wars take it if all of the sudden, while the Senate is in recess, we find that there has been a treaty concluded, especially in light of these particular hearings where we have other constitutional law authorities with opposing points of view?

They have indicated that the administration cannot cede American territory, de facto or de jure, without the legislative approval of Congress and then the two-thirds ratification by the Senate.

If this happens—and I think particularly if it happens during the time that we are in recess—then everybody in this country ought to be pretty concerned about how open this administration is.

What would be the opinion of the Veterans of Foreign Wars under those circumstances?

Mr. JONES. Well, sir, I would judge that in the period that the 95th Congress is in recess that the administration would make a major public relations effort to gain widespread support for the treaty, whatever the provisions may be.

I would suspect that the President could go on television with the fireside chat format which he has used. A variety of techniques would be used.

It is in this regard, Mr. Chairman, that for a number of years now I have tried to debate this issue on its merits, and I am unpersuaded by the arguments advanced by the other side. It seems to be a self-induced definition of colonialism which not even the people down there believe. It is a national self-inflicted wound we are confronted with.

Senator HATCH. I sat in a meeting with Ambassador Linowitz where he said that the people down there are mad at us all over Latin America, that they consider us to have stolen the canal, and that basically we were at fault during the negotiations for, and the acquisition of, the Panama Canal. He also said that we have to make this up to these people or we will lose face not only with Latin America but with all the Third World countries. It would go far beyond this hemisphere, he maintains.

Do you agree with that assessment?

Mr. JONES. Mr. Chairman, I have heard the charge made that what is needed is a "modern treaty" to replace the arrangement of some 63 years duration since the canal has been in operation.

I point out to those who raise this charge that Great Britain has been on the Rock of Gibraltor since 1713, following the Treaty of Utrecht. Certainly, I would suspect the Spanish would like very much to have the British not be there. British diplomacy has succeeded in keeping this very much on the back burner. I commend my colleagues in the State Department to British diplomatic techniques.

Senator HATCH. You have brought up an important point. I wish to say something about it. One of the most interesting courses I had in college which I remember was studying Bailey's "Diplomatic History of the United States of America" and to see that on almost every score we lose because of our diplomatic approaches in world diplomacy. Our diplomats have been naive through the years, and I think that this giveaway is just about as naive as any that we have undertaken.

Let me ask you this. Basically these hearings have been very, very important. I don't think that the American people are being told about the importance of these hearings by the press and media. I don't know who is to blame with regard to that.

What is the Veterans of Foreign Wars going to do to get this information out to the country? I think that it is about time people realize

that we have had two administrations now—not necessarily just President Carter's—that are going around the authority of the Constitution and the Congress to make a decision in these matters. We are apparently dealing with a nonopen diplomacy situation involving a matter that almost everybody in America has some cognizance of but needs some more information concerning. And, I believe a majority of Americans are against this treaty and this approach that the administration is taking.

Mr. JONES. To the extent we can, our present commander in chief, Mr. Bulldog Smith from Georgia, and the individual apparently slated to take his place, Dr. John Wasylik from Ohio, fully understand the concerns you allude to and will make this probably the single most important aspect of our national security program.

Senator HATCH. I might mention that I don' think we have a lot of time to do it in. I think you will find all of a sudden that we have a wonderful treaty that the administration thinks we should readily accept.

Frankly, the importance of these hearings is in pointing out that the Executive has no right to do that, not without the approval of Congress with regard to cessions of U.S. territory and properties.

Even more important, I think you will have to agree with me that if they do it, and if they do it in such a way that the Panamanian troops can just walk right into Panama and take over, then we will never get back the canal, even if a majority of the people in this country disagree with the President's actions and even if both Houses of Congress disagree.

Mr. JONES. Mr. Chairman, you are entirely correct. If we remain in the canal in this framework on Panamanian sufferance, on that day we have lost practical control that candidate Carter stated in October——

Senator HATCH. We had testimony last week that if the Panamanians take over, they will be inclined to raise the tolls to the maximum limits that they can drive those prices to without losing traffic. Frankly, we may be able to pay those prices, as the richest country in the world, but what about the rest of the nations? And especially the other Latin American nations who, I agree, are saying publicly that they want Panama to have the canal but privately are hoping that we keep it.

Mr. JONES. The concerns you raise, Mr. Chairman, certainly square with my impression. The Panamanians are well aware of the fact that to maximize their revenues they have got to move very quickly in the face of competition from containerized transportation, oil pipelines, and the rest.

A Panamanian friend of mine told me that they are going to go right up to the point, just slightly under the point where using the cape route would be economically advantageous.

Senator HATCH. Well, I would just suggest to you that if you feel as strongly as you do about this that you had better get the word out.

We shall provide you with transcripts of both days of the hearings. We shall probably have both of them by Monday. You can check with us and get them. You may utilize them for whatever purposes you

need. But I think the people in this country do not understand the constitutional issue. I don't think many of our legislators do. There are a few who do. I think that by the time they find out just how outrageous the approach is that it may be too late, unless the Veterans of Foreign Wars and other groups will get these issues before the American people. I don't believe the press is reporting the results of these hearings.

We have had the Governor of Panama up here to testify. We have had the former Chairman of the Joint Chiefs of Staff to testify and eminent scholars, Senators, and Congressmen, including the chairman of the committee which has the major portion of the work to do with the canal.

I don't want to denigrate anybody, but I can say this. I was not a bit persuaded by the so-called legal authorities of the State Department who testified last week or today. I don't think they have provided us with any precedents for unilateral action on the part of the Chief Executive in this instance.

Thus far, we have seen no authorities who can rightfully dispute the fact that article IV, section 3, clause 2, prevents this type of treaty.

What I am afraid of is that we are going to create an international problem because the administration didn't take their time to go to the Congress and say, "Look, we want authority to go down there and get a treaty and we won't conclude any negotiations or even recommend ending negotiations until we have your approval and we shall continue to maintain control of the canal until we do."

Had they done so, it might well be that the Congress would have granted them that authority to negotiate a new treaty and it would have been in keeping with the Constitution.

Since they have chosen to go the other way, the fact of the matter is if they go into a treaty that grants Panama what Mr. Linowitz and Mr. Bunker have stated will be granted to Panama and then make some sort of a deal and offer them money, then I think the administration will be inviting Panamanian troops to enter the zone and a fait accompli will be accomplished. And who is going to care what Congress does at that point? The losers will be the American people and the American Nation as a whole.

We are not going to win any friends by handling foreign policy in this manner. Of course this treaty stands squarely in line with past American foreign policy which has wrecked this country's diplomatic relations for many, many years. As evidenced in Bailey's "Diplomatic History of the United States," time after time our diplomats fritter away what our country has gained through honor and sacrifice.

I suggest that your organization is one of the few in this country that could really get a message out. You could get enough people cognizant as to what the facts are so they can make up their own minds. They, in turn, can notify their respective representatives as to what should be done in this matter.

The purpose of these hearings is to bring to the public point of view various constitutional and other issues, hopefully some solutions thereto, that are very, very important for all Americans to know what is really going on here. Most Americans just talk in terms of: "That's

ours and we are going to keep it and we don't want to give it up." But there are far more significant issues involved here than just the emotional one that we have a group of people who are going to give the canal away.

There is another aspect here that should concern every member of the Veterans of Foreign Wars and I think every citizen. That is that the Panamanians have made, if the newspaper accounts are true, outrageous demands which you have cited here in your testimony, Mr. Jones. These are outrageous demands which the United States will somehow bail them out of some sort of difficulty by paying, some people have said, "reparations" to them.

That is a pretty important issue because if that is a part of the treaty, then I suspect that the American people are not going to put up with a great big payment. I suspect that we are going to have another lose-face procedure, or, should we say, that we are going to have the pressure by the administration that Congress must appropriate the money that they have agreed to give to Panama. In which case we shall again lose face in South America.

What now seems clear is that the methods of the administration are bound to lead to a deterioration of relationships with our Latin American nations and are bound to lead to greater difficulties over the use of the Panama Canal. They may lead to an abdication by the United States of the canal and an absolute denial of our rights in the canal. They may serve as an invitation to guerrilla warfare, sabotage, and other problems that the advocates of this treaty are always talking about anyway.

These are the issues that I am concerned about.

All of this could have been avoided had the administrations—and I say plural here—come to Capitol Hill and gotten a mandate from the Congress, as provided for in the Constitution.

Last but not least—and I don't mean to do all of the talking here—the more I get into the Constitution, the more I realize the ingenuity, the genius, the inspiration of the founding fathers. They seem to have understood some of these problems back then which we can't seem to understand today, primarily because the press doesn't report them or the media doesn't report them and, second, because we don't have an open administration as we were promised.

That is a strong statement; it is a strong indictment. I apologize because I like President Carter personally, and it may not even be President Carter who is directly behind this treaty. It may be a lot of the people around him. But I think it is an abominable thing when the people in this country can't get the truth before we have, I think, a treaty come forth without everybody having been informed.

I can tell you right now that informing a handful of congressmen, as the State Department said it did this morning, is no information at all; it is basically not—there are 435 congressmen.

And, as far as the Senate is concerned, when I attended the briefings, the State Department didn't ask us for our input or what we think about the constitutional problems. It was telling us what they intended to do and what they think must be done under the circumstances.

Maybe other senators have had a different experience, but that has been my experience. Frankly, I have some real questions whether the treaty should be negotiated, but the way this is going and the approach that is being taken, frankly, is very offensive to me.

I think your organization may be one of the organizations that can get the message across. I know that this subcommittee will be happy to cooperate with you in any way that it properly can so that the American people can really understand what is happening. If you need our help, we shall be happy to assist.

Mr. JONES. Thank you very much indeed, Mr. Chairman.

I think that if we could roll back the history of the last 3½ years, Dr. Kissinger would have been well advised to have had strong congressional representation when he undertook the "Statement of Principles" with the Panamanian Foreign Secretary.

Senator HATCH. Between you and me, I think Dr. Kissinger may or should have some second thoughts about the approach that has been taken. I think that he is pretty well locked in to the position of the Kissinger-Tack agreement about the so-called need for a new treaty. But, nevertheless, I should think even he would have questions concerning the merits of the approach that is being taken right now by the administration and the State Department.

Mr. JONES. Sir, we will be as clearheaded and as nonincendiary as we can with the issue.

Senator HATCH. That is the way it should be done. I think the American people ought to be able to choose what is right here, and then they can inform their elected representatives as to what they really want.

But, I would just hope that someday, some way, somehow the American people are going to be consulted, and certainly the Congress. I think this is dangerous, and I think that any Supreme Court decision on the question, long after the fait accompli becomes fact, is almost useless, except for the future. But, of course, the Panama Canal would be long gone by then.

Mr. SCHWAB. Mr. Chairman, in the middle of next month we will be in convention in Minneapolis, Minn. That is our national convention. We expect upwards of 40,000 in attendance. I wonder, when we are furnished a transcript of this hearing for correction as is the routine, if we could possibly get a Xerox copy of that, including the remarks you have made since we testified.

Senator HATCH. Certainly. We appreciate your testimony, and we appreciate your stand.

I, for one, stand very strongly in favor of the Veterans of Foreign Wars. I think you do an awfully lot of good things for this society, and I think you do them for the right reasons. So, I am very pleased to have had you testify here today. Thank you.

Mr. SCHWAB. Thank you, Mr. Chairman.

Senator HATCH. Our last witness today will be Mr. William R. Drummond of the Canal Zone Police Lodge. As I understand it, you have come up here from the Zanal Zone, Mr. Drummond. We welcome you to Washington. We are very pleased to have you here. We shall certainly be very interested to hear what you have to say.

TESTIMONY OF WILLIAM R. DRUMMOND, CHAIRMAN, CANAL ZONE CENTRAL LABOR UNION-METAL TRADES COUNCIL LEGISLATIVE COMMITTEE

Mr. DRUMMOND. Thank you very much, Mr. Chairman.

I would like to, first, commend yourself and Senator Allen and the rest of the subcommittee for initiating and coordinating this hearing. I would like to extend that to your staff for the courtesies that they have given me in allowing me to testify here before you today.

Senator HATCH. We are happy to do so.

Mr. DRUMMOND. I would like to introduce myself and give further background as to my motivations and special interest in this regard.

I have been in the Canal Zone for about 13 years. I am a police private. I have been a union representative in the Canal Zone more or less for about 5 years.

Some of the things that motivated me to take up this interest was the reflection that I held on certain actions that were being taken in regard to this particular matter, and in regard to some of the inequities that I saw, because of my position as a policeman, occurring in the Canal Zone.

I suppose that I am a political animal in the sense that I have been to several hearings, mostly in the House, to discuss issues of employee benefits. However, when I joined the canal organization, I took an oath as a police officer to enforce the law. I am a U.S. citizen, and as such, my paramount interests are U.S. interests and citizens' interests in the Canal Zone.

As I mentioned, I am the legislative representative of the Central Labor Union-Metal Trades Council which is composed of approximately 13 or 15 unions. Their base is U.S. employees, however, they do represent non-U.S. employees.

I am the president of the Canal Zone Police Union. I represent both U.S. employees and non-U.S. employees. I am also the chairman of an organization called the Canal Zone Non-profit Public Information Corp. I initiated this corporation so that I could legally, based on my position as an employee, bring out certain issues, this being one of them, to the public and to the Congress at large.

Mr. Harmon is our representative up here for the Canal Zone Non-profit Public Information Corp. None of the people who work for this organization get a salary.

In that context I would like to begin my statement. If I may, I would like to break off at certain points so that I can more fully clarify some of the issues.

It is my understanding that the subject of this hearing is to resolve the constitutional controversy between the President's right to negotiate treaties and the Congress right, once a treaty acquires territory, to administer and dictate the future disposition of that U.S. territory. It is my firm belief, not without substance, that the solution to this controversy is to have the executive branch seek direction and approval from the Congress prior to embarking upon any new Canal treaty with the Republic of Panama.

The basic reason I am here is for that particular point.

Before discussing the issues of this hearing, I wish to forcefully point out, lest it be forgotten, that the very purpose, the very existence of constitutional separation of powers is to protect the political stability of this country. The inhabitant of the whole territory of the United States, I believe, has a supreme right to protection under the laws of the United States; not just some laws but all those laws that the Congress has enacted and which apply to the specific territory in question.

In order to apply these protections in the Canal Zone, it must be firmly established, No. 1, that the United States is the sovereign power within this territory. This subcommittee has already heard testimony on this legal point from far greater authorities than myself. I would like to point out that from a legal standpoint I have no authority to speak on the subject.

However, I too offer proof of U.S. sovereignty in the Canal Zone that, if once read, will leave the reader in no doubt that the United States is the sovereign in that territory and that "you were there" as canal history unfolded.

What I refer to is a document made up by one of my colleagues in the Canal Zone. I fully support all of the issues that he presents here [indicating]. It is not only based on the legal documentation and historic background of the canal, but it also brings out the political atmosphere that existed between the United States, England, France, and Panama. It is not based solely on the U.S. view. It is based primarily on a view of the Panamanians of that time written in their press releases, et cetera.

I would appreciate it, Mr. Chairman, if I may include this in the record.

Senator HATCH. Without objection, so ordered.

[Material follows:]

THE PANAMA CANAL AND THE CANAL ZONE

One often hears a mishmash of myths, half truths, and in some cases deliberate misrepresentation of facts by State Department spokesmen and others partisan to the cause of giving away the "U.S. Taxpayers' Panama Canal", its protective Canal Zone and other properties.

When most of their arguments are destroyed by documented counter argument they fall back upon innuendo and allude to the dark beginnings of our relationship with "poor little Panama" when that bully Teddy Roosevelt of "Big Big Stick" fame imposed an unfavorable treaty upon Panama.

Of course Teddy Roosevelt, Secretary Hay, Secretary of War Taft, Bunau Varilla and key members of the U.S. Senate are no longer with us nor capable of defending our country and their personal honor against such attacks and innuendo.

Some of the misrepresentation hinges upon phraseology contained in the treaty and the intentions and understanding of the contracting parties back at the time of the Revolution.

An energetic newsman, writer, commentator, diplomat, or bishop have no excuse for repeating such myths and half truths. The newspapers, official documents, notes of understanding, minutes of treaty negotiations and historical books make a fairly complete record.

One of the most revealing sources (next to personal correspondence) are the newspaper accounts of the era when the Canal history was unfolding. As Panama viewed a Canal as a "life or death proposition" the English language "Star and Herald" and the Spanish language "Estrella de Panama" gave news of Canal interest careful coverage whether it originated in Paris, Washington, D.C., New York or Bogota.

The Canal scholar or would be "authority" who neglects a careful search of the "Star and Herald" and "Estrella de Panama" newspaper morgue or microfilm files does a potential disservice to those who read and accept an otherwise "seemingly thorough" work.

This is an attempt to dispel some of the "new myths" and explain the "old realities" which our forefathers took into account before negotiating with Colombia.

Uncompensated expropriation and repudiation of agreements entered into by earlier political adversaries or governments and frequent revolutions were common in Latin America. Therefore, they insisted upon "effective sovereignty" over the strip of land they were purchasing with taxpayer revenues. They wanted to be certain that their investment couldn't be expropriated.

As they were interfering with nature in a way which had the practical effect of extending the U.S. Coastline, and because they realized the

military value to our Navy and the great disadvantages we could suffer if the Canal were to fall into the hands of an enemy, they insisted upon perpetual ownership and control of the strip of land they were going to purchase.

Exhibit A from the Star and Herald of June 25, 1902, shows the mandate the U.S. Congress gave President Roosevelt. This article is extremely important because it shows that the founding fathers of Panama knew very clearly what conditions were necessary to insure a Canal built at Panama instead of Nicaragua! You will note how many times it used the word perpetuity or perpetually. It called for a strip of land ten miles wide. It used the term "territory" with respect to purchase of land. It called for U.S. government and courts and police.

More important was the clause in Section 4 which stipulated "That should the President be unable to obtain satisfactory title . . . control of the necessary territory . . . within a reasonable time and upon reasonable terms" that he should proceed with the Nicaraguan route.

The above clause was Senator Spooner's clever compromise which got the Canal effort moving again after it had been stalled for some time in the battle of the routes by strong partisan blocs within the Congress. It should also be clearly understood that it was also the incentive to the business interests in Panama to revolt if Colombia (Bogota) failed to ratify the Hay-Herran Treaty.

Exhibit B is from the Spanish language daily, "La Estrella de Panama" printed less than a month later which once again highlighted the great opportunity or loss to Colombia which the Spooner Amendment represented.

Exhibit C - reprinted from the Star and Herald of November 26, 1902 outlines the Treaty of Peace between the liberals and conservatives. Article 7(c) shows how important to the Colombian economy a Canal Treaty would be. The monetary system of the country was going to be reformed. The revenues from the Treaty was going to provide the necessary backing.

Exhibit D - reprinted from the Star and Herald of December 3, 1902 is an article from the New York Independent. It is urging restraint upon the U.S. government and fair treatment of Colombia because of improper and high-handed methods which were being suggested in the Nation's Press. It is important to note that although President Roosevelt and his advisors may have been weary of shakedown attempts by the Colombians they did not act to carry out such suggestions.

Our diplomatic behavior toward Colombia left much to be desired but treatment of the Colombians should be contrasted to our treatment of the Panamanians to whom we have always been most generous and helpful. In 1922 we made reparations to Colombia in the sum of twenty five millions of dollars, for which we obtained recognized and secure borders for the fledgling Republic of Panama and bought all rights to the Canal Territory, railroad and French Canal Company properties. The price reflected the ten millions we were going to pay the Colombians for the strip of land plus

the fifteen millions they were trying to shake loose from the French Canal Company from the forty millions to be paid them for their properties.

Exhibit E is reprinted from the January 27, 1903 Star and Herald. It outlines the terms of the Hay-Herran Treaty which was sent to the Senate by Roosevelt on January 24, 1903.

It is important to note that this treaty, ultimately passed by the U.S. Senate did not fully comply with the provisions of the Spooner Amendment. It was written up as a leasehold, which lease was perpetually renewable in periods of one hundred years at our sole option.

Senator Morgan of Alabama offered approximately sixty amendments to this treaty when it was being debated, most of which were ultimately included in the Hay-Bunau Varilla Treaty of November 1903 for reasons which will be elaborated later. Note should be taken that the Bunau-Varilla Treaty was changed from a lease to a territorial grant (cession). This was done without completely re-writing and re-debating the treaty. It is responsible for making current misrepresentations possible.

Exhibit F - reprinted from the Star and Herald of August 18, 1903. Consideration of the Canal Treaty by the Colombian Senate dragged out for many months. As early as July 5th of 1903 when the Panamanian Congressmen arrived in Bogota they threatened revolt unless the treaty was passed. By August 15, 1903 this Washington dateline article discusses pending Colombian amendments which would undoubtedly be unacceptable in Washington.

This article is especially significant in that it shows the founding fathers of Panama knew that the Colombian Senate considered the power desired by the U.S.A. over the strip as equivalent to <u>absolute sovereignty</u>.

Herran cautioned that the "States insists upon the treaty ratification without any amendment and that it could never, under any circumstances, consent to yield in the matter of sovereignty along the strip".

The last paragraph which has been highlighted states that Secretary Loomis who was acting for Hay, would make no interpretation of provisions concerning U.S. control in the Isthmus lest the Colombian Government subsequently interpret some communication from the State Department as contradicting the definite language of the treaty and he did not "intend that this government be so entrapped".

After they had been attacked by opponents from the liberal party the founding fathers of Panama who were largely conservatives decided their best defense was to attack the Treaty in a literal sense pointing to the "as if sovereign" phraseology. This article taken together with the 1904 Provisional boundary agreement (Davis-Arias) prove they fully understood what they had sold for ten million dollars, U.S. protection and future prosperity.

Exhibit G - a reprint from the "Star and Herald" quotes a Buenaventura, Colombia dispatch dated August 17, 1903 stating that the U.S. Government had rejected the modifications.

Exhibit H - From the "Star and Herald" - this article quotes a January 15, 1904 article which reviewed the many warnings the Colombian Government that Panama would secede. It is included here for chronological purpose. The article ends with an October 31, 1903 dispatch from Minister Beaupre in Bogota to Secretary Hay advising Congressional adjournment. Nothing more had been done since the August 12 rejection of the treaty and great anxiety existed over rumors of secession movements in Cauca and Panama. It states that Panama revolted three days later.

Exhibit I - reprinted from the Star and Herald of November 13, 1903 is entitled "Herran warned Colombia".

This article is very important because he explains the very predictable U.S. behavior under the 1846 Treaty. "The Government certainly seems to be at a terrible disadvantage. The United States will insist on protecting traffic. This always means an advantage to the side that is in possession. If the government were holding Panama and Colon the United States would naturally sustain the government by preventing fighting where it would interrupt traffic. As the insurgents are in possession of Panama they will probably derive assistance from the presence of United States Forces".

Knowledge of this basic fact was what Bunau Varilla and the revolt leaders at Panama counted upon. They had neutralized the Colombian troops by means of generous bribes. Unless the U.S. acted against them to restore Colombia they were safe. To keep the railroad route open the U.S. would have to deter effective Colombian action by sea.

Bunau-Varilla, a consumate strategist and diplomat moved swiftly to get recognition for the new government and hasty ratification of a treaty which accommodated Senator Morgan's major amendments to Hay-Herran and any adjustments necessary to bring that treaty into agreement with the requirements of the Spooner bill. In that way Roosevelt and Hay could say to the Senate you have already debated this treaty and the desired amendments have been incorporated.

Exhibit J - reprinted from the Star and Herald November 26, 1903. The modern myth makers alude to a U.S. sponsored or instigated revolt. As a matter of fact no such thing was ever proved against our government or its high officials. There is little doubt that Roosevelt was prudent enough to keep the situation under surveillance and a great likelihood exists that he made his mind up to support the Panamanians, when and if they did revolt, short of making war upon Colombia.

This article is very important because it shows that when Secretary Hay was approached in September 1903 he offered no support to would be secessionists from Panama. Taken together with Cromwell's denial of

assistance to Amador who was in the U.S.A. looking for help to make a Revolution one can understand why Amador turned to Bunau-Varilla to rescue the revolution and agreed to let him negotiate and sign the Treaty.

Exhibit K - reprinted from the "Star and Herald" November 20, 1903 contained a London November 17 dateline -

Regarding sovereignty a British newspaper "The Standard" of London recognized "the situation as a practical extension of the American Territory since the U.S. obtains effective rights of sovereignty on the Isthmus".

A November 18, 1903 Washington datelined article stated "Absolute sovereignty is awarded to the United States over the Canal Strip, the convention meets in every way the requirements of the Spooner bill".

The brilliant, very competent Bunau-Varilla, aware of the attacks made by the liberals in the Colombian Senate, used the phraseology "as if sovereign" in describing U.S. rights in the territory ceded in order to safeguard those conservative businessmen who made the revolution. He also used it in order to avoid listing all the attributes of sovereignty and providing a reason or opportunity to Nicaragua Route Advocates to debate those issues.

He gave the U.S. "effective sovereignty" as the British newspaper pointed out by the foregoing in combination with phraseology which excluded the Panamanians from the exercise of any sovereign rights, power, or authority within the Canal territory.

The State Department has, in recent years, been <u>completely dishonest</u> with the citizens of our country on this issue by the <u>deliberate practice of half truth</u>. As the President of the U.S.A. is currently minimizing the rights which we acquired, it is important to use the newspaper reports of the "construction" given to the rights we obtained at the time of the treaty! It is important that Senators and Congressmen take him to task for letting the State Department and certain Council of Foreign Affairs personalities or staffers make him a party to such a deception! It is hard to believe that he is aware of the truth in this matter. More important, the State Department has in a wholesale fashion made fools of legions of newsmen and writers who propagate the misinformation.

Exhibit L - reprinted from the Star and Herald of December 3, 1903.

This article is important, mainly, because one of the leaders, Federico Boyd clearly stated that the revolution had been undertaken as gamble specifically based upon the factors cited by Herran the Colombian negotiator (See Exhibit I) that the predictable U.S. actions to keep the railroad transit open would favor the revolutionists. He stated, "We knew that as soon as the United States heard of our movement warships would

be sent to maintain transit, but we were relying entirely upon ourselves, knowing the justice of our cause would win for us recognition, though we had no assurances from any power".

The great risks these brave men took were taken primarily for economic reasons as the foregoing articles clearly show they threatened secession as early as July 1903 if the treaty were to fail of ratification (see Exhibit H). In the United States, at least one newspaper expressed the sentiment that "shrewd Panamanian merchants" had taken advantage of the U.S.A. There was a great deal of truth to that assertion.

Exhibit M is a reprint of an Estrella de Panama article which published a December 13, 1903 letter from Felipe Bunau-Varilla to the Foreign Minister of Panama.

It is a letter which should be translated and read in its entirety. It may have been printed in English in the Star and Herald but I do not have a copy of it. It puts the treaty negotiations into the real life perspective of the times. The battle of the routes was not really over until Bunau-Varilla's speedy actions foreclosed any accommodation with Colombia over re-incorporation of Panama.

Bunau-Varilla expresses thanks to the Boyd-Amador-Arosemena delegation for their support and friendship especially as it concerned those points in which there could have been a slight difference of opinion.

He explains the rapidity of his action was necessitated by the imminent arrival of General Rafael Reyes, President elect of Colombia, who with his undeniable authority could have created a terrible situation by offering as he later did "a Canal for nothing" and stating a willingness to pardon the revolutionists in Panama.

Election year politics were involved and such a move by Reyes could have resulted in a bloc vote by the democrats which would have defeated any Panama Treaty.

Because of Bunau Varilla's brilliant handling of the situation when Reyes disembarked, his teeth had already been pulled. The treaty had been ratified. The U.S.A. couldn't change its mind in any honorable fashion.

Bunau-Varilla also states that as the Foreign Minister knew the American government had never been involved directly or indirectly in the liberation movement of the Isthmus he further stated that it was done without the slightest effort of the American government nor any of its citizens.

Bunau-Varilla goes on to explain his actions taken with the J.P. Morgan Bank on behalf of the republic. On October 20, 1903 when Dr. Amador departed the U.S.A. for Panama he did so with an understanding that

Felipe Bunau Varilla would provide $100,000 for the Revolution. It was part of the help for which Amador agreed to let Bunau Varilla negotiate and sign the Treaty for Panama.

Moreover Amador knew there was no diplomat who could do a better job. He knew that Bunau-Varilla was responsible for Roosevelt's preference of the Panama route which was accomplished through his friend Senator Hanna. This was an engineer who had devoted much of his adult life to completion of the French Canal at Panama. He had, almost single-handedly saved the Panama route in the battle with Nicaraguan Advocates several times.

Moreover, Bunau-Varilla knew the railroad politics, he knew the attitudes and people in Bogota, he was a newspaper publisher in France and force to be reckoned with as a stockholder in the French Company. There was no other individual who had such a global view of the whole Canal situation or who had worked so hard to make a Panama Canal a reality. Amador was extremely wise to make him Panama's Ambassador and entrust the treaty to him.

Much to do is made by State Department and other "Panama Canal giveaway" advocates that Bunau-Varilla wasn't even a Panamanian but he had signed the treaty.

They do this great man and Panama's founding fathers a great disservice because no one could have done better. Without him there would have been a Nicaraguan Canal. Many unproven assertions of impropriety on the part of Secretary Hay and Bunau-Varilla have been made. I have seen no reasonable proof offered. They both did what they had to in order to get a Treaty through the Senate.

Secretary Hay understandably exaggerated the favorableness of the treaty in urging its speedy ratification upon the U.S. Senate. He was anxious to remove the issue from campaign politics as the Democrats would charge collusion in a revolution against a friendly nation.

He is frequently quoted by spokesmen for a treaty to show that the U.S.A. somehow took unfair advantage of Panama. We may have behaved badly towards Colombia but we have been eminently fair with Panama.

Too many State Department arguments depend upon literal interpretations taken out of context and independent of the ferment and environment in which they occurred.

Exhibit N - a reprint from the "Star and Herald" of February 23, 1904.

This article shows the nature of political charges against Roosevelt's Administration for collusion in a revolution. Senators Hoar and Barly show that they were desirous of being responsive to their constituents. Barly's comment is particularly revealing. As a southern democrat and

partisan of the Nicaragua Route he considered Roosevelt less than fair because he did not comply with the mandate of the Spooner Amendment which called for the President to proceed with the Nicaraguan Route when he couldn't make satisfactory progress with Colombia. They all viewed his persistence on the Panama route as foul play in view of the fact that the Hay-Herran Treaty had been rejected by Colombia.

Recognizing that Roosevelt would not build a Canal at Nicaragua and knowing that reconstruction efforts of the Southern States required a Canal to increase their prosperity Senator Barly announced his vote in favor of the Treaty.

One of the most important myths promulgated by Panamanian negotiators, the State Department, Archbishop McGrath of Panama and other Treaty Advocates concerns the degree of government exercised by the U.S.A. in the Canal Zone.

It is frequently stated that a system of courts, police, jails and government was not originally anticipated nor intended. Nothing could be farther from the truth!

The original Spooner Amendment (Exhibit A) specified the kind of functions and control desired by our practical forefathers who knew that to exercise "de facto" control of the enterprise our American employees would have to be free of the harassments which could be heaped upon them by Colombia through courts, police and taxes among other things.

You have seen the Panama newspaper coverage in the preceding articles on sovereignty (Exhibit K) and the August 18, 1903 article (Exhibit F) which described objections of the Colombian Senate to the degree of control (sovereignty) desired by the U.S.A. and Secretary Loomis' refusal to discuss them lest such communications be used to dilute our control.

This article shows that Senator Kittredge introduced a bill to "provide for the temporary government of the Panama Canal Territory and the protection of the Canal Works and for other purposes". It is entirely consistent with the manifest intentions of our Senate and Executive Branch who were party to the Treaty process.

This article should be taken in conjunction with the Davis-Arias Provisional boundary agreement signed in June of 1904 which clearly stated as one of its purposes the creation of a Canal Zone Government and definition of juridical boundaries.

The reader should also see the hearings of the Senate Committee on Inter-Oceanic Canals in 1906 during which Governor Davis testified. He submitted written documents which proved that Panama understood the cession of territory, and anticipated the exercise of full U.S. Governmental powers within the Canal Territory. An early communication

from Tomas Arias, the Panamanian Minister of Government and Justice concerned a meeting to discuss setting of customs in Canal Zone equal to that of Panama to avoid contraband problems.

Governor Davis kept a careful record of communications. Also included in his submission were copies of the phraseology used in early Republic of Panama laws enacted to accommodate to a U.S. government in the Canal Zone. Unfortunately, authorities in Washington D.C. decided to apply the Dingley Tariff law in the Canal Zone. When Governor Davis announced the intention to impose them locally, the merchants in Panama raised a ruckus! Amador and Arias' rivals from the liberal party seized upon the treaty as a sell out of the national patrimony. In self defense, the conservative leaders adopted a strategy of literal interpretation of the treaty. They then began to back away from previous interpretation clearly documented by Governor Davis.

Ever since then, they have used the strategy of attacking U.S. interpretation of the Treaty. Their liberal adversaries were thereby denied a weapon. Unfortunately, over the years our diplomats have been either so desirous of ingratiating themselves with the Panamanians or too lazy to look into the setting in which the agreement was made that they have come around to supporting the Panama Government interpretation of events to the detriment of U.S. basic interests in the Canal Zone.

The Provisional Boundary Agreement (Exhibit Q) used the words "cedes" four times. In three of those cases it is used in conjunction with "Territory ceded" to the United States. This agreement signed at Panama on June 15, 1904 only four months after it had been debated in the U.S. Senate and ratified by the U.S.A. clearly shows that Panama understood that we had purchased "territory" for our ten million dollars along with "effective sovereignty". The agreement was signed by Arias and Panama Attorney General Ramon Valdes Lopez.

The Provisional Boundary agreement was not published in the U.S.A. after it was enacted. A reading of Senate Hearing Minutes of Governor Davis' testimony in 1906 established that fact. Therefore the agreement is largely unknown to writers on Canal issues. That, however, is no excuse for State Department Official ignorance. In their Alice in Wonderland doublethink-doubletalk way they would like to forget the facts and tell the American Public that "We only purchased rights not land or territory".

Article XXII of the Hay Bunau Varilla Treaty also establishes that Panama "renounces, confirms, and grants to the United States . . . all right, title and interest which it now has or may hereafter have in and to the lands, canal, works, property and rights held by the said companies under said concessions or otherwise, and acquired or to be acquired by the United States from or through the new Panama Canal Company, including any property and rights which might or may in the future either by lapse of time, forfeiture or otherwise, revert to the Republic of Panama under any contracts or concessions, with said Wyse, the Universal Panama Canal Company, the Panama Railroad Company and the new Panama Canal Company".

"The aforesaid rights and property shall be and are free and released from any present or reversionary interest in or claims of Panama and the title of the United States thereto upon consumation of the contemplated purchase by the United States from the new Panama Canal Company, shall be absolute, so far as concerns the Republic of Panama, excepting always the rights of the Republic specifically secured under this treaty".

It should be clear, even to the U.S. State Department, that we were permitted to buy and obtain title to all the properties and lands of the aforementioned companies and concessionaires. How the State Department can twist those facts around to being only rights, I do not know!

It doesn't end there, however, because the Joint Commission, stipulated in Article VI of the Bunau-Varilla Treaty, purchased for the United States at fair market value from the individual property owners and even squatters all the privately owned land in the Canal Zone. See the 1920 final report of the Land Commission printed on the Mount Hope Press for an account of the sums paid for each parcel of land.

Article XXII is also useful in debunking another State Department misrepresentation. They have promoted the idea that we are not paying Panama enough rent or enough for the rights which we obtained. The most frequent disguise is about the $250,000 annuity payable in Gold. Because of devaluations of the dollar that sum approximates $800,000 today. Nowhere in the treaty is the word lease or rent used.

In 1955 the State Department, in order, to secure a loan for Panama, and assure the banks of the payment of the debt, had the original annuity increased by one and a half million dollars. Payment is made directly to the banks involved and Panama never sees any of the $2.3 million dollar annuity. Article I of the 1955 Treaty clearly states that "contracting parties recognize the absence of any obligation on the part of either party to alter the amount of the annuity".

The new 1.5 million dollar gratuity which is paid out of State Department funds helps to cloud the issue and to give credence to the idea that the U.S. is paying "rent" or that Panama isn't getting a large enough share of Canal revenues.

Once again a reading of the first sentence of Article XXII clearly establishes that Panama is not a partner in the Canal enterprise and therefore not entitled to any share of the proceeds! It states "The Republic of Panama renounces and grants to the United States the participation to which it might be entitled in the future earnings of the Canal under Article XV of the concessionary contract with Lucien N.B. Wyse now owned by the New Panama Canal Company and any and all other rights or claims of a pecuniary nature arising under or relating to said concession, or arising or relating to the concessions to the Panama Railroad Company or any extension or modification thereof".

It is clear that our forefathers considered the sum of ten million dollars, certain lands which we purchased from the New Panama Canal Company which lay outside the smaller Zone which we obtained, and an annuity of $250,000 in gold which continued to Panama the former income received by Colombia for the Panama Railroad concession, as sufficient consideration for the rights and properties which the U.S. obtain in the treaty.

For the State Department to aid and abet Panama's effort to paint the U.S. as niggardly toward Panama is incomprehensible. Who is supposed to represent the U.S.A. in the "Court of World Opinion"? Whose logical duty is it to refute half truth and deliberate misrepresentations? They do a good job in taking care of major banking interests! Somehow they don't believe they owe an equal effort to the U.S. taxpayers' property and rights in world and national forums.

Exhibit O - reprinted from "The Star and Herald" of March 9th, 10th and 12th of 1904.

This article was included to add to the case which has been built to show from Panama's newspapers just what their leaders had to know concerning interpretations of the treaty recently signed. Senator Kittredge introduced a bill on February 23, 1904 for the temporary government of the Panama Canal territory and this article speculates that General Davis will be the first Governor.

Exhibit P - reprinted from "The Star and Herald" of March 10, 1904.

This article is eloquent in explaining the dilemma presented to the U.S.A. by the "shrewd Panamanian merchants" and their Ambassador extraordinaire F. Bunau-Varilla and a successful revolution. It is also an excellent rationale for the Roosevelt Administration's actions in recognizing Panama so quickly and for our relatively poor treatment of Colombia.

Exhibit Q - Provisional Boundary Agreement (Davis-Arias Agreement) taken from Volume 3, Canal Zone Code, Appendix II signed at Panama June 15, 1904.

Referred to earlier in the commentary about the attached news articles taken from Panama newspapers. Pertinent sections and phraseology have been highlighted with a yellow felt pen.

Exhibit R - Treaty for the Mutual Extradition of Criminals signed at Panama May 25, 1904.

This agreement also acknowledges that the Canal Zone is a territory of the United States in reference to "shall seek an asylum or be found within the territories of the other:"

It can be seen that this treaty preceded the Davis-Arias agreement but is the instrument which precipitated a need for the provisional boundary agreement so that it could be implemented.

Exhibit S - Reproduced from "Isthmian Canal Policy Questions" page 194

President Taft was the Secretary of War under Theodore Roosevelt. In December 1904 he made a trip to Panama to sooth ruffled feathers caused by the announcement of the Dingley Tariff as it was intended to apply it in the Canal Zone.

President Amador requested that the minutes of their meeting be kept confidential because of the opportunity for political mischief. Those minutes are printed in the 1906 Senate Committee on Isthmian Canals hearings.

A Statement made by President Roosevelt in a letter to Secretary of War Taft and repeated by Taft in Panama is frequently quoted out of context to allege that the Canal Zone is a "Colony in the Heart of Panama" created contrary to agreements.

In his confidential meetings with Amador and Panamanian Officials in Panama Secretary Taft was careful to advise them that Secretary Hays' reply to Ambassador Obaldia in Washington on matters concerning sovereignty in the Canal Zone would stand unchanged by any act of his as Secretary of War.

It is instructive then to consider President Taft's words at a banquet given in his honor on November 16, 1910. He said, "We are here to construct, maintain, operate, and defend a world canal, which runs through the heart of your country, and you have given us the necessary sovereignty and jurisdiction over the part of your country occupied by that canal to enable us to do this effectively".

A careful reading of Exhibit S will show that his words were carefully chosen to illustrate that the U.S.A. did not want to make a colony of Panama by interfering needlessly in its internal affairs. He especially wished to dispel malicious gossip to the effect that one of the purposes of his trip had to do with annexation of Panama. He added, "We have no desire to add to the territory under our jurisdiction except as the operation of the Canal may require it".

Taft's statement at the banquet should suffice to show that neither Roosevelt, Taft nor Secretary Hay diluted the strong U.S. interpretation of our treaty rights with Panama or what we were permitted in the way of governmental functions within the Canal Zone. His statement at the banquet some six years after his visit in 1904 shows a continuity of interpretation which was consistent with what was reported in the press and documented by the foregoing newspaper articles. There is no question that Panama's founding fathers could misunderstand what we had paid them for!

The foregoing information should make clear the monumental deception being practiced upon the American Public by its own State Department.

Their principal artifice is to use the wording found in the treaty to cast doubt upon the real rights conferred. It is easy to understand if you compare the text of the Hay-Herran Treaty to that of the Hay-Bunau Varilla Treaty. You will find much of the text to be identical. As the Hay-Herran Treaty was written up as a leasehold agreement it is only natural that many of the subsidiary articles are consistent with that interpretation. Bunau Varilla's tactics of incorporating most of Senator Morgan's significant amendments offered in the debates over ratification of the Hay-Herran Treaty and making only necessary changes offered the obvious benefit of negating the need of a lengthy reconsideration period by the U.S. Senate of the Hay-Bunau Varilla Treaty.

The similarity of the two agreements ends there. The most important change was the elimination of the word "leases" and substitution of the words "grants" or "cedes".

It is easy for a modern day "State Department Charlatan" or a Panamanian Partisan to misrepresent the meaning of Treaty Articles if you limit your knowledge of those events and intentions to textual interpretation in the absence of other available and pertinent facts. While it may be excusable and understandable that Panamanian Partisans use these tactics, it is inexcusable malfeasance when practiced upon the American Public by our State Department!

Considerable material has been covered in reference to the above clippings. It was presented in the hopes that it would be helpful to writers, Congressmen, Senators or commentators who would not have the time to do research. The clippings are no substitute for a more thorough search of the Panama newspaper files. Those presented were limited by what was readily available to me. The newspapers are on microfilm at the Canal Zone Library in its Panama collection. Printing copies from the roll microfilm is not very feasible for private individuals.

The articles are therefore limited largely to the "Voice of the Past" series researched by Xenia Batista and presented in the Star and Herald during the last several years and easily clipped and saved.

If you read them, "you were there" as Canal History unfolded. You can be the judge as to the understandings reached by ancestors of U.S. citizens and the ancestors of Panamanian citizens. The news of the era has to give a more accurate reflection than current myths developed to justify a "give away". Will you help to more fully inform your fellow citizens?

[Panama—1904]

PROVISIONAL BOUNDARY AGREEMENT[1]

(Davis—Arias Agreement)

INFORMAL PROVISIONAL DELIMITATION OF THE BOUNDARIES OF THE CANAL ZONE

(See 1904 Ann. Rept. 78 and 91–93)

Signed at Panama June 15, 1904

(Senate Doc. No. 401, 59th Cong., 2d Sess., Vol. III, p. 2300)

SECTIONS

1. Limits of Canal Zone; provisional acceptance.
2. Limits of city and harbor of Panama; provisional acceptance.
3. Limits and harbor of Colon; provisional acceptance.
4. Special agreements respecting delimitation of auxiliary lands or waters.
5. Employment of Panamanian citizens resident in Republic.

[§ 1] Whereas, By the terms and provisions of Article II of the Convention for the Construction of an Interoceanic Canal between the United States of America and the Republic of Panama, signed by the representatives of the two nations on November 18, 1903,[2] the ratifications of which were exchanged at Washington on the 26th day of February, 1904, the United States acquired the right of use, occupation, and perpetual control, from and after the said 26th day of February, 1904, in and over the Canal Zone and other lands, waters and islands named in said Article II of the Convention aforesaid;

Whereas, It has not yet been, and is not now, practicable to make a complete, definite, and exact location of the precise boundaries of all the territory ceded to the United States by the terms and provisions of said Article II of said Convention, and

Whereas, The successful completion of the work of construction of the Interoceanic Canal across the Isthmus of Panama is of transcendent importance to the United States, to the Republic of Panama, and to the people of the world;

Whereas, In order that said work of construction of said Interoceanic Canal may be systematically prosecuted, and in order that a Government for the Canal Zone created by the terms and provisions of said Article II of said Convention may be successfully organized and carried forward, it is necesesary that the extent and boundaries of the territory ceded to the Government of the United States by the Government of the Republic of Panama under the terms and provisions of said Convention shall be provisionally determined and agreed upon; and

Now Therefore, General George W. Davis, Governor of the Panama Canal Zone, acting for and on behalf of the Government of the said Zone, and Senor Don Thomas Arias, Secretary of State of the Republic of Panama, and Senor Don Ramon Valdes Lopez, Attorney General of said Republic, jointly acting for and on behalf of the Government of said Republic of Panama, having agreed that the Government of the Republic of Panama has delivered, and the Government of the United States has received, and had, on the 19th day of May, 1904, received, for its use, occupation, and control, the Isthmian Canal Zone described in said Article II of the aforesaid Convention for the Construction of an Interoceanic Canal, including lands and waters in the said Zone, lands under water, islands in said Zone, and the islands of Perico, Naos, Culebra and Flameno, do make this further

AGREEMENT

[§ 2] Sec. 1. The limits of the Canal Zone, including lands under water and islands ceded, but not including the cities and harbors of Colon and Panama, delivery of which lands, waters and islands has been made by Panama, and

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[1] This agreement was superseded by the Boundary Convention of September 2, 1914. See § — et seq., post. See, also, note under section 1 of Title 2, Canal Zone Code.

[2] For Art. II of the 1903 Convention, see App. III, § 63.

possession of which has been taken by the United States, are indicated and shown on the attached map (marked "A"),[3] signed by the parties to this Agreement, as accurately as it is possible to indicate on a map with the existing information respecting the topography of the region traversed by the Canal, by a heavy red line crossed with black, and drawn at the uniform distance by scale of five statute miles on each side of the middle line of the Canal, and said indicated boundary, or line of division, between the territory ceded by the Republic of Panama to the United States for Canal purposes and the adjoining or abutting lands of the Republic of Panama is provisionally accepted, and will be strictly observed by the two Governments until the limits or boundaries of the said Zone, waters and islands shall be definitely and finally marked, fixed and determined.

[§ 3] Sec. 2. The limits of the city and harbor of Panama, as indicated and shown by a heavy red line crossed with black on the attached map (marked "B"),[4] and as described on the paper attached to the said map, both of which are signed by the parties to this Agreement, are provisionally accepted and will be strictly observed by the two Governments until the true and definite line of division between the Canal Zone and its waters, on the one hand, and the city of Panama and its harbor, on the other, shall be finally surveyed, marked off, fixed and determined. *Provided*, that the outer or marine boundary of the harbor of Panama shall, as soon as practicable, be agreed upon and marked with buoys or other monuments.

[§ 4] Sec. 3. The limits of the city and harbor of Colon, as indicated and shown by a heavy red line crossed with black on the attached map marked "C"), and as described in a paper attached to said map, both of which are signed by the parties to this Agreement, are provisionally accepted and will be strictly observed by the two Governments until the true and definite line of division between the Canal Zone and its waters, on the one hand, and the city of Colon and its harbor, on the other, shall be finally surveyed, marked off and determined.

[§ 5] Sec. 4. As necessity may arise, special agreements will be made and entered into from time to time by the parties hereto or by their successors respecting the delimitation of any auxiliary lands or waters outside the Canal Zone which may be found to be necessary or convenient to the construction, sanitation, or protection of the Interoceanic Canal or of its auxiliary works.

[§ 6] Sec. 5. The Governor of the Canal Zone, or his successors, may employ the citizens of the Republic of Panama residing in the territory of the Republic, for which purpose the Government of the Republic gives them the permission mentioned in paragraph two of Article 7 of the National Constitution.

In Witness Whereof, We have signed these presents in the city of Panama. this 15th day of June, 1904.

Geo. W. Davis,
Governor Canal Zone.
Tomas Arias,
Secretary of State,
Republic of Panama.
Ramon Valdes Lopez,
Attorney General,
Republic of Panama.

Mr. Drummond. In summary there has been a lot of talk about a Frenchman who, because of self-interest or what have you, sold the Panamanians' rights to the United States—hoodwinked them. There has been talk that we, the United States, stole the canal from Panama.

In this document I bring out forcefully the one single person who should be commended by all of Panama is the Frenchman Bunau-Varilla. Without him, there would have been no canal. He and some of the founders of the Panamanian state— there was a handfull of them—worked hard to establish a canal in Panama. The Colombian Government had been fully informed many times, both in the Panamanian press and otherwise, that they were going to revolt if there was no canal in the Isthmus of Panama.

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[3] The map referred to was not reproduced. Presumably, it will be found with the original agreement.

[4] Same as footnote 3, ante.

The United States had an obligation in this respect to keep the isthmus open. There was a treaty made with England.

These people took a risk when Colombia rejected the treaty. The risk was essentially this. They were on the property at the time. The United States was obligated to keep the property open. The United States could support Colombia, or it could support them.

Initially the United States chose to do neither, according to documentation presented here.

Colombian troops came in. These handful of people were successful in bribing the commanders of the troops. There was no bloodshed in Panama of any sort. It was a bloodless coup.

They, the Panamanians, declared it and they, as of 1903 waited for the United States to recognize them. The United States chose to do so. The United States had an obligation, No. 1, to keep the isthmus open. No. 2, there was already a bill in Congress to build a canal for the whole world, not just for the United States but for the whole world.

In any case, I will not argue whether or not the United States has sovereignty in the Canal Zone. I think it has been clearly established by other speakers here.

In order to apply U.S. protections in the Canal Zone, it must be firmly established that the United States is the sovereign power within this territory. I have done that in this statement.

The outcome of this controversy on separation of powers, I believe, will have a profound effect, not only on the inhabitants of the Canal Zone but on U.S. citizens within the States as well. I believe, Senator Hatch, you brought that out clearly here today.

CIVIL RIGHTS THREATENED

As the above indicates, we in the Canal Zone, have had the right to freedom of speech, assembly, petition, life, property, and religion, solely based on the idea that we are the sovereign in the Canal Zone, since the United States established itself as that sovereign.

As in the Bill of Rights, the Canal Zone Code dictates that laws abridging these rights are "void." These rights cannot be taken without due process of law. I would also like to emphasize that it has been established by law, in *United States* v. *Husband* in 1971, that the "Canal Zone Bill of Rights" has the same force and effect as the original document from which it came—the U.S. Bill of Rights.

I enumerate in my written statement where the history of these rights began. Personal and civil rights applicable within the Canal Zone originated by Executive order on May 9, 1904, but pursuant to the authority given by act of Congress, dated April 28, 1904. On June 19, 1934, also pursuant to an act of Congress, the Canal Zone Code consisting of seven titles was established.

On October 18, 1962, the revised Canal Zone Code was enacted by Congress through Public Law 87–845 (Stat. 76A). Effectively what it does is to enumerate the same rights as the Bill of Rights. It gives the citizen in the Canal Zone the right to ownership of property, which is another point that has been raised by the State Department.

Senator Hatch. Let me interrupt you for a second. I am going to have to recess the hearing. I apologize for doing this in the middle of your testimony. But we have a vote on the floor of the Senate. I

shall have to be there. Let us hope that Senator Allen will soon return.

If you will kindly wait, we shall recess until Senator Allen can get here. Then we can take the rest of your testimony.

Please accept our formal apologies, but I must leave for the Senate Chamber.

I appreciate your testimony thus far. I have read your statement. It is a comprehensive statement.

At this point, then, we shall recess until Senator Allen returns or until a committee staff member informs you that we are both detained, at which time the staff member will continue the hearing.

Mr. DRUMMOND. I thank you very much.

[Recess taken.]

Mr. CROMMELIN [chief counsel and staff director]. Senator Allen has called saying that he is presiding over the Senate right now and has asked that we continue with the hearing.

The subcommittee wishes to have Mr. Drummond complete his statement. So, Mr. Drummond, if you would, please continue.

Mr. DRUMMOND. As I mentioned, I believe it has been well established that the United States is the sovereign in the Canal Zone. As such, U.S. citizens residing in the territory have certain rights. These rights are, in effect, the Bill of Rights.

I am not in any way asserting that the Canal Zone employees or residents or inhabitants of the Canal Zone have constitutional rights. All of their rights are given to them by act of Congress—that I am asserting.

In my letter to the chairman, dated July 8, 1977, I have indicated that, with the possible exception of freedom of religion, all of the above rights have been negated or compromised by our executive branch in deference to the present treaty negotiations. I see a definite pattern of cause and effect. In response to their actions, I have entered into a court suit, along with several of the Members of this Congress. I firmly believe that the rights of the citizen in the whole of our territory ranks supreme.

The courts have declared that my appeal, based on the above rights, are not yet "ripe" for adjudication. I can only deduce from this ruling that the court considers my claim to be abstract and that this present negotiation process has not yet subverted the rights of the Canal Zone inhabitant.

In all due respect to the court, I must assert that this ruling is not a true reflection of the facts as they apply to the Canal Zone. Not only are the Bill of Rights in the Canal Zone being substantially violated in direct deference to the present canal treaty negotiations, but the rights of the citizen within the continental limits of the United States are also being violated, and for the same purpose.

The rights of the citizen to be protected under the laws of the United States is not abstract. They are true and meaningful rights that cannot be abridged by the foreign affairs policies of the executive branch without due process of law.

I have been a frequent target of these violations, mainly because I have refused to accept that the Canal Zone inhabitant is a "political pawn" in these treaty negotiations. I understand that testimony was given here earlier, I believe it was last Friday. The subject was brought up that the constitutional issue should be set aside because we are talking in terms of billions of dollars.

That is true in one respect. We are talking in terms of billions of dollars. I question who is going to be the recipient of those billions of dollars. I question the merits of the expending of those billions of dollars. But I also point out that the constitutional issue that is lightly brushed aside leaves me with a feeling that the citizens in the continental United States are not being given their just due. They are not being given the right to due process. They are not being represented. And, they should be, if we do have a government of three branches.

FAMILY DETAINED

With respect to my own personal involvement, I would like to bring up one most recent example. On July 22, 1977, at about 11:30 a.m., my family and I were detained at the Tocuman Airport in the Republic of Panama. That was not the first time.

I was en route to testify at these hearings. This detention was effected by the Panama customs agents at this airport. This incident developed over the validity of citizenship of my two children, William, Jr., and Donaldson, aged 11 and 7, who had accompanied me on this trip.

This detention lasted for about 30 minutes. It was resolved upon my bribing one of these customs inspectors with 15 dollars. Specifically I was told that because my children were born in the Canal Zone, the territory of the Republic of Panama, according to the customs agents, I would need a "Pasi-Salvo" for each boy prior to leaving Panama. I would also like to point out that they instructed me that I would also need Panama passports for these two boys.

I explained to this agent that I was leaving the Canal Zone en route to Washington, D.C., and that I would be returning to the Canal Zone and not the Republic of Panama. I offered official Canal Zone Government orders to this effect, and still this agent insisted upon his position. I produced U.S. passports with my children's citizenship, but these documents only further complicated the matter. In the end I was forced to use the one passport that Americans are forced to use in this and other countries—money.

This problem exists because of the stated position of our executive branch. At least since 1975, the State Department's position is that the United States is not sovereign in the Canal Zone. Since we are not sovereign, according to our Embassy and our State Department, Panama law and Panama citizenship applies. Any child born in the Canal Zone to a U.S. citizen is required, according to our executive branch, to take out dual citizenship to comply with Panamanian law when leaving the country. The fact that this position is in direct violation to present treaty agreements with the Republic of Panama appears to have little effect on our State Department.

At this time, Mr. Crommelin, I would like to present for the record a copy of the order that I was given. I would like to point out that both myself, my two sons, and my wife are recorded on these orders.

This reflects upon a treaty giving canal employees and their families free access in and out of Tocuman Airport. I believe the treaty was agreed to in 1947 with the Republic of Panama.

Mr. CROMMELIN. Mr. Drummond, we will, without objection, place the order in the record.

[Material follows:]

CANAL ZONE GOVERNMENT—PANAMA CANAL COMPANY

7-14-77

REQUEST FOR LEAVE OF ABSENCE AND AUTHORIZATION FOR LEAVE TRAVEL

NOTE: FOR USE ONLY WHEN LEAVE WILL INVOLVE TRAVEL AT GOVERNMENT EXPENSE UNDER PUBLIC LAW 600 (79TH CONGRESS). AS AMENDED. FORM MUST BE TYPED AND SHOULD BE FORWARDED 4 MONTHS BEFORE PROPOSED TRAVEL, IF POSSIBLE.

IMPORTANT: ORIGINAL MUST BE FORWARDED TO THE CLAIMS BRANCH WITH COMPLETED TRAVEL VOUCHER (U.S. STANDARD FORM 1012) WHEN CLAIMING REIMBURSEMENT.

DATE July 14, 1977

TO: (HEAD OF UNIT) Chief, Police Division (Thru: D. P. C.) | EMPLOYED AS Police Officer | I.P. NO. 174211

[redacted] Police | [illegible] 02 | [illegible] 05

DATE LEAVE BEGINS July 21, 1977 | LAST DAY OF LEAVE: July 30, 1977 | APPROX DATE OF RETURN TO ISTHMUS July 30, 1977

2. I DESIRE MY PAYCHECKS HANDLED IN THE FOLLOWING MANNER: FORWARD PAY FOR PERIODS ENDING (SHOW DATES):

(1) No Change (2) (3) (4)

(5) (6) (7) (8)

3. PAYCHECKS TO BE FORWARDED TO ADDRESS(ES); SHOW NUMBER FROM PAR. (2)

N/A

4. TRANSPORTATION IS REQUESTED FOR SELF AND THE FOLLOWING DEPENDENT MEMBERS OF MY HOUSEHOLD AS SHOWN: (List first and last names in full, including employee's. Under STATUS show "employee," and for members of household, their relationship to employee, i.e. "wife," etc.)

FROM ISTHMUS TO DESTINATION				RETURN TRANSPORTATION FROM STATES			
NAME	BIRTH DATE	STATUS	CITIZENSHIP	NAME	BIRTH DATE	STATUS	CITIZENSHIP
William R. Drummond	10-23-38	Emp.	U. S.	William R. Drummond	10-23-38	Emp.	U. S.
Nivia J. Drummond	2-18-41	Wife	Pan.	Nivia J. Drummond	2-18-41	Wife	Pan.
William R. Drummond Jr.	6-12-66	Son	U. S.	William R. Drummond Jr.	6-12-66	Son	U. S.
Donaldson M. Drummond	8-20-69	Son	U. S.	Donaldson M. Drummond	8-20-69	Son	U. S.

5. SHOW WHETHER: ☒ MARRIED. ☐ SINGLE. ☐ DIVORCED. ☐ WIDOW.

IF SPOUSE IS EMPLOYED, SHOW AGENCY AND LOCATION OF EMPLOYMENT:

6. APPROX. DEPARTURE DATE	TRANSPORTATION LINE TO U.S. (SHOW PREFERENCE, IF ANY, LISTING NAME OF TRANSPORTATION COMPANY)	TO U.S. BY	FROM U.S. BY
July 21, 1977	Pan Am Air	☒ AIR ☐ SS	☒ AIR ☐ SS

7. U.S. PORT OF ENTRY	ALTERNATE HOME LEAVE DESTINATION: (WHERE TRAVEL IS NOT TO RESIDENCE SHOWN IN 8 BELOW)	SOUTHBOUND TRAVEL: SAILING DATE FROM NEW ORLEANS:
Miami, Florida	International Inn, 10 Thomas Circle, Wash. D. C.	N/A

NOTE: The Transportation Branch will consult employee about 30 days before departure, or upon receipt of application submitted on shorter notice, regarding carriers routings and other details of north and southbound trips. Explanation of limitation of travel, par. 2 below, available by contacting Transportation Branch, phone 52-3325

8. RESIDENCE IN STATES, AS APPROVED BY PERSONNEL DIRECTOR FOR HOME TRAVEL	9. STATES ADDRESS DURING VACATION
Pennsylvania	International Inn, 10 Thomas Circle, Wash., D. C.

10. QUARTERS NO. AND TOWN	TELEPHONE NO. HOME / OFFICE	LOCAL P.O. ADDRESS	SIGNATURE OF EMPLOYEE
6576-B Corozal, C. Z.	52-6115/52-7862	Box 1090, Balboa, C. Z.	William R. Drummond

TO: (HEAD OF BUR. OR DIV.) (APPROVAL RECOMMENDED)

W. F. Kessler, Chief, Pol. Div.

(SIGNATURE OF UNIT HEAD)

TO: CHIEF, TRANSPORTATION BRANCH FORWARDED APPROVED. APPLICANT IS A PERMANENT / PART-TIME EMPLOYEE

F. A. Cotton, Civil Affairs Dir.

(SIGNATURE) (TITLE)

SPACE BELOW RESERVED FOR TRANSPORTATION BRANCH

DATE: CERTIFICATE OF AUTHORIZATION ORDER NO. LTO

1. The requested travel and expenses necessary for the performance thereof are authorized to the extent allowable under pertinent laws and regulations, subject to the conditions indicated in this authorization.
2. Limitation of travel: Reimbursement for round-trip travel, including allowable per diem, use of privately-owned vehicle, and other allowable expenses shall not exceed the cost had round-trip been undertaken via:

Provided that reimbursement shall not exceed allowable expenses to travel to actual destination, if less expensive.

3. Government transportation request(s) issued:

4. REMARKS:

ORIGINAL (TRAVELER'S) COPY

BY AUTHORITY OF THE GOVERNOR-PRESIDENT

Mr. DRUMMOND. With that, I would also like to point out a news release from the Miami Herald, dated January 8, 1975, in which this subject was brought to the public's attention.

Mr. CROMMELIN. We will have that placed into the record also.

[Material follows:]

[From the Miami Herald, Jan. 8, 1975]

BORDER HASSLES BAR U.S. CITIZENS LEAVING PANAMA

PANAMA.—U.S. citizens, traveling on U.S. passports but born in the U.S.-controlled Panama Canal Zone, are being barred from traveling by road to Costa Rica unless they have a Panamanian passport and tax clearance.

Under a provision of Panama's 1972 constitution, all persons born in the Canal Zone are regarded as natural-born Panamanians, but only in the last four months has it worried U.S. citizens born there.

In that period, at least six Americans from the Canal Zone, and probably more, have been stopped from leaving Panama on the Inter-American Highway at Paso Canoa, on the Costa Rican border.

"It is still a problem," a U.S. embassy spokesman said here, adding that "the embassy has been discussing it with the (Panamanian) immigration people for a long time, but right now we are at an impasse."

"The kids here think it's a blast," said the mother of one young man stopped at the border, but others born in the canal zone react bitterly to it.

The youth obtained a Panamian "cedula" (identity card) and passport, both of which were issued in his mother's maiden name because she had divorced after his birth.

Under Panama law, a divorced woman does not retain her husband's name.

Gifted with two passports and two different surnames, the youth and a companion traveled the 300 miles to the Costa Rican border.

There, Panamanian officials refused them exit for lack of a Panamanian tax clearance certificate ("paz y salvo"), obtainable, for 25 cents, only in the capital.

They returned to the Canal Zone, subsequently flying to the United States (their original destination) from Panama's Tocumen International Airport where they experience no travel document problems.

Under a 1936 agreement between Panama and the United States, Tocumen is a "corridor" for Americans entering or leaving the Canal Zone with Canal Zone documentation.

The Canal Zone government has its own customs and immigration officers at the airport.

In the meantime, Canal Zone authorities are discouraging highway travel to Costa Rica and beyond for Canal Zone-born Americans; or suggesting they obtain the Panamanian documentation required.

About 18 per cent of the Canal Company's 3,500 U.S. citizen employees were born in the Canal Zone.

Nobody appears certain as to how extensively Panama is enforcing the requirements, however. It's believed to be the result of lower-echelon bureaucracy rather than any high level decision.

Mr. DRUMMOND. I would like to differentiate between an employee leaving the Canal Zone by road through the Inter-American Highway and a canal employee leaving for the United States through Tocuman Airport. This airport is considered to be a corridor that employees in the Canal Zone, because of this treaty of 1947 or 1949, have the right to free access in and out.

I have had this harassment problem on prior occasions, as I mentioned.

Mr. CROMMELIN. Mr. Drummond, let me interrupt to ask you if you think that problem is related to your activities regarding the canal negotiations, or is it simply a problem that all Americans in the zone would face?

Mr. DRUMMOND. To my knowledge, I am probably the only person that this has happened to. I cannot state that it has never happened to anyone else. I believe it was probably related with my political beliefs and activities, but I cannot prove that.

In any case, it is a further deterioration of the agreements made with the Republic of Panama, based on our State Department's official position that, No. 1, children born in the Canal Zone, a U.S. territory, born of U.S. citizens, are not citizens, and, therefore, are required to comply with the laws of the Republic of Panama, which is in direct violation of the treaty of 1947 and the present treaty related to the canal—the 1903 treaty.

In that respect I would like to continue. This problem exists, as I mentioned, because of our State Department's position. It is in black and white. Several of my constituents have gotten copies of this State Department position [indicating]. I am also enclosing three other incidents of Canal Zone inhabitants who have had their rights vio-

lated and can expect no protection from the executive branch of our Government. I wish to point out that these are not infrequent incidents and are directly related to the present treaty negotiations. In the one example dealing with policeman [name omitted], the Panama Government has again violated present treaty agreement, but worse, through ignorance or otherwise, our executive branch has assisted them in this violation.

Mr. CROMMELIN. Mr. Drummond, we will place that report dealing with the incident in the record.

Mr. DRUMMOND. At this time I would like to include a letter that I have written to the Governor on this particular incident.

Mr. CROMMELIN. Mr. Drummond, we will, without objection, also place that into the record at this point.

[Material follows:]

PAGE 1 OF 1 PAGES

SUPPLEMENTARY REPORT

2 DATE OF THIS REPORT: May 20, 1977

3 TIME: 10:30

4 ☐ FORM USED AS CONTINUATION SHEET FOR
☐ ARREST REPORT ☐ INCIDENT REPORT ☐ MISSING PERSON REPORT
☐ OFFENSE REPORT ☐ JUVENILE REPORT ☐ TRAFFIC ACCIDENT REPORT
☐ COMPLAINT REPORT ☐ VEHICLE REPORT

5 ☐ FORM USED TO REPORT FOLLOW-UP INVESTIGATION OR SUPPLEMENTARY INFORMATION ON REPORT: I-77-1893

6 OFFENSE CHARGE OR INCIDENT ON ORIGINAL REPORT: Student Demonstration at the Limits Area
☐ YES CHANGED ☒ NO

7 STATUS ☐ CLEARED ☐ PENDING ☒ CLOSED ☐ UNFOUNDED

8 OFFENSE CHARGE OR INCIDENT CHANGED TO

9 MULTIPLE CLEAR-UP?
☐ YES (LIST OTHERS IN NARRATIVE) ☐ NO

QTY.	10 NARRATIVE	STATUS	VALUE

The following information has been received from various sources. It was learned that during the afternoon of May 19, 1977, Elias Castillo, Representative of Chorrillo and Domingo Barcenas, Corregidor of the same district, made several attempts to have the students from the Bonifacio Pereira Schooll Chorrillo, R.P. to re-initiate another demonstration at the Limits area. This demonstration would have been the second one to denounce the shooting incident that occurred at the Limits on Tuesday, May 17, 1977. The source added that the students refused to participate and suggested that the National Guard conduct the demonstration.

Elias Castillo who is seeking re-election has been conducting an extensive campaign against the Canal Zone Police in efforts to gather votes for his re-election

11 REPORTING OFFICER / BADGE	12 RESTRICTED DISTRIBUTION	13 TOTAL VALUE RECOV.	14 TOTAL VALUE STOLEN
Det. W.E. Weberg	☐ YES ☒ NO	$	$
REPORTING OFFICER / BADGE	15 SUPERVISOR APPR.		16 CONTINUED ON ANOTHER SUPPLEMENTARY FORM? ☐ YES ☒ NO
	Det.Lt. W.E. Affeltranger		

1355
Rev. 4-73

DETECTIVE SECTION/TRAFFIC SECTION/DESK

Canal Zone Central Labor Union
and Metal Trades Council, AFL-CIO
Box 471, Balboa Heights, C. Z.

May 18, 1977

William R. Drummond, Chairman
Legislative Committee
P.O. Box 1994
Balboa, Canal Zone

To: Governor H.R. Parfitt
Governor of the Canal Zone
P.O. Box M
Balboa Heights, Canal Zone

Dear Governor Parfitt:

On the afternoon of May 17, 1977, about ~~2:00~~ 4:00 P.M., policeman [redacted] shot a young thief in the leg in the process of effecting an arrest. The thief, although wounded, escaped into the Chorrillo slum area of Panama city located on the Canal Zone-Panama boundry. This shooting incident occurred within the Canal Zone. A detailed report of this shooting is on file at the Balboa, Canal Zone Police Station. The shooting was fully justified, under the circumstances that it occurred.

About ~~4:00~~ 5:30 P.M. Lt. Colonel M.A. Noreiga arrived at the scene of this shooting with a contingent of about ten armed body guards and Panama National Guard officers. He parked his private car in a position that caused traffic congestion and immediatly began beratting Canal Zone policeman Harold Wilson who had just recently releived policeman [redacted] from his normal tour of duty.

Noreiga accussed policeman Wilson of shooting an "innocent student."

Policeman Wilson alerted the Canal Zone police station, and politly informed Colonel Noreiga that he was mistaken and offered to have his supervisor speak to Noreiga to resolve the matter. Noreiga refused this offer. Officer Wilson offered to contact our Canal Zone-Panama leison officer for the same purpose but Noreiga refused even this offer.

Policeman Wilson then explained the circumstances of the previous shooting to a National guard officer who had accompanied Noreiga and still Noreiga, who appeared to be intoxicated and in a high state of agitation, refused to accept this policeman's explaination.

This high Panama government official got out of his car, began poking his finger into policeman Wilson's chest, called him a lier, in general intimidated him, and appeared to be conducting his(Noreiga's) own personal investigation through interrogation within the Canal Zone. Noreiga intimated that officer Wilson could himself receive bodily harm, "get shot", for the shooting of this thief. Our Canal Zone-Panama leison officer arrived only to be given a curt signal of refusal by Noreiga as he and his troops returned to Panama.

Noreiga obviously intended causing an incident by provoking this police officer. He did not succeed. There is some in-

dication here that Noreiga may have intended to kidnape the officer responsible for shooting this theif. The fact that he arrived too late does not make this possibility any less realistic, or probable. If you will recall, in September of last year, two of our officers, while on routine leison duty, were in fact arrested by the Panama National Guard without reason.

The very next day, May 18, 1977, a completely distorted account of this shooting was released by the Panama government to its controlled press; complete with front page picture of the policeman involved in the shooting.

That very evening, from about 6:00P.M. to 730 P.M. an orchestrated riot erupted in this same Chorrillo area and along the Canal Zone-Panama border. Canal Zone television news indicated that no damage was reported as a result of this riot.

Now I am sure that our Embassy in Panama would strongly assert that there is no substance to the allegation that Noreiga and his agents had anything to do with this disturbance; just as our Embassy in Panama has publically refused to comment on the fact that Noreiga and his agents had anything to do with the October 1976 bombings that occurred within the Canal Zone.

Their assertions, based on my own knowledge which is not without substance, are worse than dishonest, they are dangereous.

In both of these incidents, the one in October 1976, and the

riot that occurred today, I have had the misfortune to have my car extensively damaged. The damage to my car, of course, is not my major concern. In this latest incident, my wife, while driving east on Thatcher highway, unaware that this riot was in progress, was forced to drive into the midst of these demonstrators. Fortunatly, she escaped without injury to her person.

But I am sure that my wife's life, during this incident, was not the only one that was in danger. There were at least twenty other vehicles that were in the same position as her own, unable to escape the crowd. Certainly these other vehicles received the same barrage of rocks and stones.

I wish to lodge this complaint, based on these latest and most serious incidents caused by this high official of the Panama government.

Canal Zone Police Officers are expected to handle incidents, such as these, perpetrated by theives and gangsters, as a part of their normal duties. However; in doing so, they should also be able to expect a normal degree of protection within the framwork of the laws of the Canal Zone.

Canal Zone residents are another matter. They have a legal right to be protected against these acts as described above. You have a responsibility to protect these people, and not just promise them protection.

Governor Parfitt, can't you do anything concrete relative to this matter? If you believe that policemen have infinite tolerance, you are wrong.

I promise you that Canal Zone residents, myself included, will not long stand by and watch while their family is put in danger. Many will leave, as you know, many already have. Others will take another course of action if they cannot depend upon their own government for this basic right.

Lt. Colonel Noreiga is obviously above the law in the Republic of Panama.

I ask you sir, is he also above the law in the Canal Zone, drunk or sober? God help the Canal Zone resident, U.S. or Panamanian that would live and work under such a system if your answer is yes!

I would like a detailed answer to this letter of protest in writting. I would like to discuss this matter in greater detail with you at your earliest convenience. Policemen are greatly dismayed at the apparent lack of visible support in matters such as this. They are damned tired of having the truth hidden from the general public for the sake of diplomatic protocol.

Respectfully yours,

William R. Drummond

William R. Drummond

Mr. DRUMMOND. I think it directly relates again to our right to sovereignty in the Canal Zone.

In this particular incident which happened on May 17, 1977, a Canal Zone employee, a policeman, in the act of his official capacity as a policeman, shot a thief in the leg in the Canal Zone. This particular policeman was a non-U.S. policeman. His performance was based upon by U.S. statute and regulations.

Subsequent to this incident's occurrence, there was clear indication by the Canal Zone police that the Panama Government instigated, or tried to instigate, riots in the Canal Zone; in particular two Panama government officials, Elias Castillo and Domingo Barcenas. One was the corregidor and the other was the representative of the Chorrillo area.

They went into a school and tried to get the kids to riot. A riot did occur. In fact, my wife was involved in it. She got the car smashed up and so forth.

But the point I make here is this. Subsequent to this incident there was an article that appeared in one of the local news media, Critica, in which they cite this policeman for his actions in the Canal Zone. Specifically they request the Panama Government to cite him into court to answer for those actions.

Either the United States is sovereign in the Canal Zone or it is not. Clearly, the 1903 treaty states that the Panama Government has no jurisdiction, no rights to sovereignty.

The Panama Government decided they were going to cite this canal employee into court anyway.

At this time I would like to include three documents which prove that that is what they did.

Mr. CROMMELIN. The documents will be inserted in the record at this point.

[The material follows:]

GUARDIA NACIONAL

CUARTEL [illegible].-

PANAMÁ, 15 DE Junio DE 19__

Ciudadano:-
Mayor [illegible]
Oficial de Enlace de la Guardia Nal.
En la Zona del Canal de Panama.-
S. D.

Señor Mayor:-

Por medio de la presente me dirijo a Ud. con el objeto de remitirle la nota No.- 418 fechada el 14 de los corrientes, de la Licenciada Fiscal Segunda del Circuito, relacionada con la citación del señor:- [redacted], con Cedula No.- [redacted] por tener caso pendiente en ése despacho.-

" J U D O P O R L A P A Z "

[illegible] Mayor:- [illegible]

REPUBLICA DE PANAMA

INTELIGENCIA MILITAR

G-2
GUARDIA NACIONAL

NUMERO 998 OE

PANAMA, 20 DE JUNIO DE 19 77

Mayor
ROBERT B. MILLS
Jefe de la Policía de Balboa
Zona del Canal
E. S. D.

Señor Mayor:

Respetuosamente tengo a bien solicitarle su cooperación a fin de que sea Citado a la mayor brevedad posible el Sr. [redacted], quién puede ser localizado en la Estación de Policía de Balboa, residente en Balboa con casa #[redacted], para que comparezca en la FISCALIA SEGUNDA DEL CIRCUITO.

Sin otro particular por el momento, me reitero de Ud., atentamente;

Mayor: GUILLERMO FERRUFINO C.
Oficial de Enlace de la Guardia Nal
de Panamá, en la Zona del Canal.

adj: boleta de citación
ria/bac.

SIEMPRE ALERTA!
1977 — AÑO DE LA INTELIGENCIA MILITAR

Para la Cámara de S.
Hy y. Pinto
1-1-111
1,40077

Panamá, 14 de junio de 1977.

CARCEL MODELO — DIRECCION
CHIRIQUI
Dirección de la Cárcel Modelo
Panamá ..... de 19 _

Mayor
Harmodio Estribí
Director de la Cárcel Modelo
E. S. D.

Señor Director:

Solicito a usted interponer sus buenos oficios, a fin de que através del oficial de enlace con la Zona del Canal, se cite para que comparezca a esta Agencia del Ministerio Público, a [redacted], con cédula de identidad personal No. [redacted], Policía de Balboa, Zona del Canal, residente en Balboa Casa No. [redacted].

Agradeciéndole la prontitud con que atienda la presente, quedo de usted, atentamente,

Fátima Stella Tuñón V.
Fiscal Segunda del Circuito de Panamá
de Turno, Suplente Especial.

FISCALIA SEGUNDA DEL CIRCUITO
PANAMA

Mr. DRUMMOND. The night court at the second circuit, located in Panama City, requested that the G–2 in Casa Modello assist them in the citation of this man to the court. The G–2 in turn requested that a liaison officer, located in our Canal Zone police station assist them in citing this employee.

The liaison officer in turn sent a letter to the district police commander of the Canal Zone police division to assist in serving this citation. The citation was served. The employee refused to sign it. Refusing to sign a citation in Panama has no effect.

This is a clear indication that the Panama Government has instilled their authorities, whether it is recognized or not, in the Canal Zone. The fact remains that our Government assisted in the process.

Now, I would like to point out that this employee is a Panamanian.

Mr. CROMMELIN. Let me interrupt to ask a few questions.

Do you feel that the failure of the executive department—at least in this instance, and you have indicated that you feel they have failed generally—to uphold U.S. sovereignty in the zone has interfered with Congressional authority to make rules and regulations respecting the territory of the United States in the Isthmus of Panama?

Mr. DRUMMOND. In that respect, I do.

I feel this. It weakens their position if they do not protest strongly. If you don't enforce your own right, it is going to be taken away from you. It can be taken away in bits and pieces if you acquiesce to the incursion.

But, not only that. You are going to have the problem of trying to enforce other laws which are involved. We are talking about cops. We are supposed to enforce the law there.

U.S. DISTRICT JUDGE SEAT VACANT

Mr. CROMMELIN. On that point, is there now a U.S. judge appointed for the district of the Canal Zone, or is that position vacant?

Mr. DRUMMOND. That seat, to my knowledge, is vacant right now, sir.

I would also like to point out that, in that respect, you have a set of laws and processes that are involved here. You have had, for I would imagine 3 or 4 months, a temporary judge who is now sick and cannot perform the function.

Mr. CROMMELIN. What is the status of the criminal docket in the Canal Zone?

Mr. DRUMMOND. As far as I know, it is lying dormant, stagnant until there is a judge.

Mr. CROMMELIN. Are you familiar with the civil docket? I know that you have done police work, so perhaps you would not be; but is it in a similar condition?

Mr. DRUMMOND. Yes, sir. At the district court level, it would be because the judge would take the civil and the criminal docket into session at the same time or in succession.

Mr. CROMMELIN. Has anyone been nominated by the President to fill that seat?

Mr. DRUMMOND. To this date, no.

Mr. CROMMELIN. I didn't mean to interrupt your statement.

I notice that you discuss in your written statement a bombing incident. I believe the subcommittee would be interested in detailed remarks on that subject.

Mr. DRUMMOND. Yes. First, however, I would like to expand on one point.

In the civil and criminal process, the defendant has the right to due process and a speedy trial. This has been ignored, at least up to this time by the executive branch because of this problem that exists with the judge.

With respect to the Panamanian employee, I would like to point out that you are talking about the Panama Government going in and putting pressure, which is what it amounts to, on Panamanian employees within the Canal Zone.

No policeman in his right mind, that is, no Panamanian policeman is going to be put in a position where he has to arrest a nacional or a Panamanian citizen and then have his actions presented to a Panamanian court. He should be given at least the right to protection under the jurisdiction and sovereignty of the United States in order to protect his rights. You are not going to get them protected down in Panama for an act that is committed in the zone. There is no way it can happen.

INTIMIDATION OF CANAL ZONE POLICE

So, what are you left with? There are 215 cops in the Canal Zone; 46 of them are Panamanian policemen. Forty-six of them are going to go out of their way not to be put into the position where they are entrapped by their own action because the executive branch of the United States will not act or will not act forcefully enough to exclude the jurisdiction of Panama in the affairs of the Canal Zone. That is what it amounts to. It encroaches on the sovereignty of the United States.

It should be forcefully brought out to these people. How do you do it? There are many ways that you can do it. In my opinion, Panama can be forcefully told, "Stop these persons or we stop your funds from flowing through your Swiss bank accounts." That is one example.

In any case, to follow up on this particular incident, let me tell you about another incident that occurred in which three Panamanian policemen were involved. Again, the sovereignty issue was brought up. It was brought out in the press. The facts of the incident were distorted. In general, the officers effecting the arrest were intimidated.

I would like to point out that one of these individuals who was involved in this arrest incident, a man by the name of Andres Salinas, has been identified by the Canal Zone police as being alleged in the October 1976 bombing. If you read the content of this report, there are some rather vitriolic statements about Americans and, in general, the abuse upon the sovereignty of the United States and the policeman involved.

Now, whether or not the person who made the statements was speaking the truth, I don't think really matters. The idea that I am trying to bring across here is the intimidation of these 46 Panamanians, as well as U.S. employees, that will be blasted in the Panama press. You have to realize that most of these Panamanian employees, as well as U.S. employees have a social life in Panama, friends and neighbors.

Mr. CROMMELIN. Excuse me. We will insert the report you mentioned into the record at this point.

[Material follows:]

1382
Rev. 4-73

CASE REPORT

1 ☐ COMPLAINT ☐ INCIDENT ☐ OFFENSE ☒ ARREST ☒ MISD. ☐ HIGH MISD. ☐ FELONY	2 TITLE NO. 6 CZC	3 ARREST NO.
1) VAG (Disorderly Conduct), 2) Battery	SECTION NO. 2) 332 1) 2541 (27)	EVIDENCE NO.

4 DAY OCCURRED: SUNDAY	5 LOCATION: Bus Stop on Pres. Kennedy Ave. at intersection of "J" St. & Gorgas Road, Ancon, Canal Zone	6 FOR ARREST ONLY ON VIEW? ☐ YES ☐ NO	REFONT NO.
7 DATE OCCUR/SECUR: June 19, 1977 — TIME: 12:45 A.M.	8 COMPLAINANT'S NAME (or Person Incident Report is about): Adolfo P. Tinker	9 I.D. NO.	
10 DATE DISCOVERED: June 19, 1977 — TIME: 12:45 A.M.	11 ADDRESS:	HOME PHONE NAT.	
12 DATE REPORTED: June 19, 1977 — TIME: 12:45 A.M.	13 COLOR / SEX / AGE / DATE OF BIRTH / 120 DAYS? ☐ YES ☐ NO	14 OCCUPATION: Police Off.	
15 DATE COMPLETED: June 19, 1977 — TIME: 3:00 A.M.	16 EMPLOYER'S NAME AND ADDRESS: Canal Zone Police	BUSINESS PHONE: 52-7862	

CODES: C-COMPLAINANT 2-2D PARTY D-DEFENDANT S-SUBJECT W-WITNESS V-VICTIM

17 CODE	18 NAME	ADDRESS
D	Benito Minghelli	House 7, "D" Str., Parque Leferve, Panama, R.P.

19 I.D. NO.	NATIONALITY	COLOR	SEX	AGE	DATE OF BIRTH	HOME PHONE	120 DAYS?
(CED)N-14-609	Panamanian	W	M	44	5-7-33		☐ YES ☐ NO

20 OCCUPATION	EMPLOYER'S NAME AND ADDRESS
Mechanic	Taller Europeo, Balboa Avenue, Panama, R.P.

21 HEIGHT FT. IN.	WEIGHT LBS.	HAIR	DESCRIPTION OF CLOTHING

22 CODE	23 NAME	ADDRESS
W	Andres Salinas A. (Avila)	

24 I.D. NO.	NATIONALITY	COLOR	SEX	AGE	DATE OF BIRTH	HOME PHONE	120 DAYS?
(CED) 8-89-418	Panamanian	B	M	41	2-26-36		☐ YES ☐ NO

25 OCCUPATION		EMPLOYER'S NAME AND ADDRESS
Lieutenant	Badge 8126	Panama National Guard R.P.

26 HEIGHT FT. IN.	WEIGHT LBS.	HAIR	DESCRIPTION OF CLOTHING

27 TYPE OF PREMISES:	28 WAS A VEHICLE USED IN THE COMMISSION OF THE CRIME? ☐ YES - WHAT TYPE? NO ☒
Public Street (Bus Stop)	

29 QTY.	NARRATIVE: (1) DESCRIPTION OF PROPERTY, INCIDENT, ARREST, ETC. (2) INVESTIGATION	STATUS	VALUE
W	Luis F. Valencia — Police Officer, Canal Zone Police		
W	Victor Joseph — Police Officer, Canal Zone Police		

About 12:45 a.m., June 19, 1977, I was standing near the bus stop on 4th of July Avenue, directly across from Gran Morrison, when I observed a late-model Pontiac, bearing R.P. license 8-49987, coming up Pres. Kennedy Ave. and about to enter 4th of July Ave. As the vehicle reached the intersection of Pres. Kennedy, 4th of July Ave. at Gorgas Road and "J" Street, the operator made a "U" turn in the intersection and drove into the bus stop on Pres. Kennedy Ave., in front of the Ancon Inn. The operator parked his vehicle and as he got out of the vehicle, I recognized him as Lt. Salinas of the PNG. Defendant got out of the vehicle on the passenger's side.

30 TOTAL VALUE RECOVERED $	31 TOTAL VALUE STOLEN $

32 DISPOSITION ONLY FINAL DISPOSITION I.E., RELEASED AFTER INVESTIGATION, GUILTY, ETC.	COURT	DATE

33 REPORTING ARRESTING OFFICER	BADGE NO.	34 DETECTIVE ASSIGNED	DATE	35 SUPERVISOR APPROVING
A. Tinker	423			W. R. Thrift

36 OFFICER	BADGE NO.	37 CONTINUED ON SUPPLEMENTARY FORM? ☒ YES ☐ NO	38 CLEARED ☐ CLEARED ☐ UNFOUNDED

1 PAGE OF PAGES

SUPPLEMENTARY REPORT

2 DATE OF THIS REPORT: June 19, 1977

3 TIME: 3:00 A.M.

4 [XX] FORM USED AS CONTINUATION SHEET FOR
[X] ARREST REPORT [ ] INCIDENT REPORT [ ] MISSING PERSON REPORT
[ ] OFFENSE REPORT [ ] JUVENILE REPORT [ ] TRAFFIC ACCIDENT REPORT
[ ] COMPLAINT REPORT [ ] VEHICLE REPORT

5 [ ] FORM USED TO REPORT FOLLOW-UP INVESTIGATION OR SUPPLEMENTARY INFORMATION ON REPORT

6 OFFENSE CHARGE OR INCIDENT ON ORIGINAL REPORT: 1) Vag. (Disorderly Conduct, 2) Battery — CHANGED [X] NO [ ] YES

7 STATUS: [ ] CLEARED [X] PENDING [ ] CLOSED [ ] UNFOUNDED

8 OFFENSE CHARGE OR INCIDENT CHANGED TO:

9 MULTIPLE CLEAR-UP? [ ] YES (LIST OTHERS IN NARRATIVE) [X] NO

QTY.	10 NARRATIVE	STATUS	VALUE

I immediately approached defendant and Lt. Salinas and informed them that they could not park in the bus stop and instructed Lt. Salinas to move the vehicle. Lt. Salinas then told me that if the vehicle was improperly parked to give him a ticket and he refused to move the vehicle. I again told him to move the vehicle and informed him that if he did not move it, I would call a wrecker and have the vehicle towed away.

Lt. Salinas became visibly upset when I told him that I could have the vehicle towed away and both he and defendant became very argumentive. During my discussion with Lt. Salinas and defendant, I noticed that both had been drinking. Realizing that Lt. Salinas was a member of the National Guard and trying to avoid further complications, I called my Patrol Sergeant and requested that our dispatcher notify the National Guard and request that they send a unit to my location.

Moments later, Officers Valencia and Joseph, operating the Boundary Patrolcar, arrived and we were met a few minutes later by Sergeant B. A. Kelleher. During all of the time that we were waiting for the arrival of other officers and after their arrival, defendant and Lt. Salinas continued to argue with me and became verbally abusive by their constant use of obscene language. Defendant shouted at me and poked his finger at me repeatedly saying, in Spanish, that all Canal Zone Policemen are sons of bitches.

During the discussion and argument, increasing numbers of persons gathered on the sidewalk and several persons came out of the Ancon Inn to listen. By that time, defendant was beyond the point of reasoning with him and he continued to shout his obscenities and be generally abusive.

After the arrival of Officers Valencia and Joseph, defendant became even more abusive and loud. He began shouting that all gringos were sons of bitches and that nobody wanted them (the Americans) here in Panama. At that time, defendant looked at Officer Valencia's nametag and, recognizing that Officer Valencia is latin stated, "Valencia, you're a traitor, you're with the gringos." At that time, defendant was standing on the sidewalk in front of the Ancon Inn and apparently thought he was in the R.P. for he stated, "I'll call you a son of a bitch here, and I'll walk across the street and call you a son of a bitch there." Defendant also told Officer Valencia that he had killed five gringos and that Valencia would be the sixth one.

As defendant continued, ~~officer~~ I arrested him for Disorderly Conduct and he began resisting by saying that nobody would be able to take him in. Officer Joseph grabbed defendant by the arm and Sergeant Kelleher, who had just arrived, also grabbed defendant. As they turned him around towards Officer Valencia, defendant kicked Officer Valencia in the testicles with his right foot.

Almost simultaneously, a Panama National Guard patrol truck arrived with a two National Guardsmen. They immediately walked over to where we were struggling with defendant and told us to leave defendant alone. At that time, Lt. Salinas, who had not attempted to interfer, stepped up to Officer Valencia and grabbed him by the

11 REPORTING OFFICER	BADGE	12 RESTRICTED DISTRIBUTION	13 TOTAL VALUE RECOV	14 TOTAL VALUE STOLEN
A. Tinker	423	[ ] YES [X] NO	$	$

REPORTING OFFICER	BADGE	15 SUPERVISOR APPROVING	16 CONTINUED ON ANOTHER SUPPLEMENTARY FORM?
		W/ R. Thrift Lt. 51	[X] YES [ ] NO

1355

1 PAGE OF PAGES

SUPPLEMENTARY REPORT

2 DATE OF THIS REPORT: June 19, 1977

3 TIME: 3:00 AM

4 [X] FORM USED AS CONTINUATION SHEET FOR
[X] ARREST REPORT [ ] INCIDENT REPORT [ ] MISSING PERSON REPORT
[ ] OFFENSE REPORT [ ] JUVENILE REPORT [ ] TRAFFIC ACCIDENT REPORT
[ ] COMPLAINT REPORT [ ] VEHICLE REPORT

5 [ ] FORM USED TO REPORT FOLLOW-UP INVESTIGATION OR SUPPLEMENTARY INFORMATION ON REPORT

6 OFFENSE CHARGE OR INCIDENT ON ORIGINAL REPORT: 1) Vag (Disorderly Conduct), 2) Battery
[ ] YES CHANGED [X] NO

7 STATUS [ ] CLEARED [X] PENDING [ ] CLOSED [ ] UNFOUNDED

8 OFFENSE CHARGE OR INCIDENT CHANGED TO

9 MULTIPLE CLEAR-UP? [ ] YES (LIST OTHERS IN NARRATIVE) [X] NO

QTY.	10 NARRATIVE	STATUS	VALUE

left shoulder and arm and stated, "Leave him alone." Officer Valencia then pushed Lt. Salinas away and Lt. Salinas made no further attempt to physically interfer, but told the two National Guardsmen to get the defendant away from us. The Guardsmen made no attempt to take defendant from us but continued to say that we should leave the man alone and wait for the arrival of their lieutenant.

During the struggle to subdue and handcuff defendant, Officer Joseph received a scratch on the inside portion of his right forearm and a small laceration at the base of his right index finger. After getting the still struggling defendant into the rear of the boundary patrolcar, the two Guardsmen continued to ask us to wait for their lieutenant and at that time, Lt. Salinas stood in front of the patrolcar and attempted to prevent us from leaving. He was also telling the two Guardsmen to block our vehicle. Because a fairly large crowd was continuing to gather, Officer Valencia turned on the emergency lights of his vehicle and inched forward with the vehicle, forcing Lt. Salinas to step back out of the way.

As Officers Valencia and Joseph drove defendant to the Police Station, defendant continued to sing the Panama National Guard hymn, "Todo Por La Patria" and continued to be generally abusive.

I remained at the scene for several minutes and insured that the crowd was leaving and that the National Guardsmen would not attempt any further action before I went to the station to make my report. The crowd quickly dispersed and the National Guardsmen soon left the area.

Immediately after arriving at the Police Station and recognizing Sergeant F. A. Robinson, defendant became very calm and friendly and started conversing with Sgt. Robinson as though nothing had happened. As we explained the matter to Sgt. Robinson, and related the fact that Officer Joseph had been scratched during the struggle, defendant replied that he "wouldn't hurt a fly."

Shortly after we arrived at the police station, Lt. Salinas arrived at the station in the company of a uniformed National Guard Lt. Sucre. Lt. Salinas continued to argue the case and could not understand why any action was brought against defendant. Lt. Salinas maintained that the only reason anything happened, is because of the "rude" manner in which I approached them. He also stated that the only appropriate action for me to take was to put a ticket on his car. Even after having the matter further explained by Sergeant Robinson, Lt. Salinas felt that I was not right in telling him that I would have the vehicle towed away.

Defendant was booked for 1) VAG (Disorderly Conduct) and 2) Battery and was informed that his bail was $100 on each charge. Defendant called his family to bring him the bail money and was then placed in jail. At 3:10 a.m. a friend arrived at the police station, posted bail, and defendant was released for his appearance in Balboa Magistrate's Court at 1:30 p.m., June 21, 1977. As defendant was leaving the police station, he very politely bid us farewell and several remarks about Panama's impending sovereignty over the Canal Zone and stated, "Long live General Torrijos."

11 REPORTING OFFICER	BADGE	12 DISTRIBUTED [ ] YES [X] NO	13 TOTAL VALUE RECOV. $	14 TOTAL VALUE STOLEN $
A. Tinker	423			
REPORTING OFFICER	BADGE	15 SUPERVISOR APPROVING		16 CONTINUED ON ANOTHER SUPPLEMENTARY FORM [X]
		W. R. Thrift	Lt. 51	

1355

1 PAGE OF PAGES

SUPPLEMENTARY REPORT

2 DATE OF THIS REPORT: June 19, 1977

3 TIME: 3:00 A.M. P.M.

4 [X] FORM USED AS CONTINUATION SHEET FOR
[X] ARREST REPORT [ ] INCIDENT REPORT [ ] MISSING PERSON REPORT
[ ] OFFENSE REPORT [ ] JUVENILE REPORT [ ] TRAFFIC ACCIDENT REPORT
[ ] COMPLAINT REPORT [ ] VEHICLE REPORT

5 [ ] FORM USED TO REPORT FOLLOW-UP INVESTIGATION OR SUPPLEMENTARY INFORMATION ON REPORT

6 OFFENSE CHARGE OR INCIDENT ON ORIGINAL REPORT: 1) VAG (Disorderly Conduct, 2) Battery — CHANGED [ ] YES [X] NO

7 STATUS: [ ] CLEARED [X] PENDING [ ] CLOSED [ ] UNFOUNDED

8 OFFENSE CHARGE OR INCIDENT CHANGED TO:

9 MULTIPLE CLEAR-UP? [ ] YES (LIST OTHERS IN NARRATIVE) [X] NO

QTY.	10 NARRATIVE	STATUS	VALUE

There seems to be considerable suggestion here that defendant and Lt. Salinas may have been trying to provoke an incident during this situation. As the on-scene actions were taking place, Lt. Salinas repeatedly called out that the press should be summoned. At one point, Lt. Salinas turned to the two National Guardsmen who were present and told them to call the press, however, no one hurried to comply with his orders.

There is the strong likelihood that if the defendant returns for court as he is cited that there may be some considerable press coverage and we should be prepared for it.

I am also including on this final page the names of two independent witnesses to these events so that they can be called , if necessary, if the matter goes to trial:

Segundo Santana, CED E-8-111-44, Equadorian, White, Male, 58, DOB 3-15-18 employed as a bartender at the Frank P. Albrook V.F.W. Club on Curundu Road, may be contacted at the Club at telephone 52-5884

German Ortega, taxi driver who was not interviewed but was recognized at the scene and who witnessed the entire exchange. NOTE: Ortega is the taxi driver who was shot about ten years ago by a soldier near Ft. Kobbe, C.Z. during a robbery.

11 REPORTING OFFICER	BADGE	12 RESTRICTED DISTRIBUTION	13 TOTAL VALUE RECOV.	14 TOTAL VALUE STOLEN
Lt. W. R. Thrift	51	[X] YES [ ] NO	$	$
REPORTING OFFICER	BADGE	15 SUPERVISOR APPROVING	16 CONTINUED ON ANOTHER SUPPLEMENTARY FORM? [ ] YES [X] NO	
		W. R. Thrift		

1355

Mr. DRUMMOND. I can't go to Panama without continually worrying about my being arrested. This particular employee, [name omitted] has been told not to go to Panama or he will be arrested. It has cited into court that he was going to get arrested.

Other employees—United States and non-United States—are involved, not just myself, for performing their official functions. I think it should be strongly brought to the Executive Branch that we can't tolerate this.

In a letter I wrote to the Governor, he indicated that he would answer the letter in more detail at a later date. I am today waiting for the answer to that letter. It is a complaint over this issue.

I have great esteem for the Governor, but in his official capacity I don't feel that he is forceful enough, as I indicated in the letter.

I mentioned that there were three incidents. If I may, I would like to include in the record a statement of events in a recent Panama Canal Zone incident, dated July 12, 1977. However, there are certain names in this statement which I would like to have blanked out so that the safety of these people will not be jeopardized. I think it is a real possibility that their lives would be in jeopardy with their names included in the record.

Mr. CROMMELIN. Subject to the deletion of the names, the material will be included in the record.

[Material follows:]

William R. Drummond, President
Canal Zone Police Union
Local 1798, A.F.G.E.
P.O. Box 1994
Balboa, Canal Zone

STATEMENT OF EVENTS

OF RECENT PANAMA - CANAL ZONE INCIDENTS

On the evening of [redacted], 1977, I was informed by telephone that one of my union members, [redacted], a [redacted] guard in the Canal Zone Protective Division, was in trouble with the Panama National Guard.

I immediatly got in touch with [redacted], a U.S. citizen, at his home in Gamboa Canal Zone by telephone.

He related the following statements to me:

[redacted] had an occassion to visit his personal friend's home in Panama city ([redacted]). Upon his arrival, he observed, and overheard [redacted] Panama cabinet Ministers who were visiting [redacted] home. [redacted] stated that they were deep in a discussion related to an impending attempt to overthrow the present Panama dictatorship. [redacted] indicated to me that he believes this conversation was also monitored by the Panama National Guard.

Not wanting to become involved in these men's conversation, he left the immediate area and discussed the reason for his visit out-side and in front of the house. While talking, he observed an unmarked panel truck with several antennas affixed to it. He identified two of the men in this vehicle as members of the Panama National guard.

On the week of [redacted], 1977 [redacted] family was at his

home in the interior. A gun battle between the agents of the Panama National guard and several inhabitants of the local area took place [redacted]. Two men were killed and one was wounded. [redacted] wife and children had occassion to observe all this. They also observed the National guard agents carry the dead and wounded men across [redacted] property onto the adjacent property owned by [redacted].

Soon after this incident took place, an article appeared in the local news-media in which these men were identified as thieves involved in a night-time burglary. [redacted] denies that this incident occurred as it was described in the news paper.

Earlier on [redacted], [redacted] had occassion to have his vehicle repaired by a mechanic that he was personally acquented with for several years. Upon driving the vehicle into Panama city, the mechanic was stopped by several persons who he recognized as G-2 agents of the Panama National guard.

These agents asked the mechanic "where is the fat son of a bitch gringo who owns this car?" They further identified [redacted] by offering that he works as a Canal Zone guard at [redacted] within the Canal Zone. The mechanic told these agents that [redacted] was in the Canal Zone and that he, the mechanic, was taking [redacted] truck to his shop for repairs.

They told the mechanic to inform [redacted] that when they catch him in Panama they are going to kill him. "The ants will feed on his eyes?"

After receiving this revelation, [redacted] tried to ascertain who in Panama wished to cause him harm and why. Through a friend he was able to find out from [redacted] that indeed he was in trouble but he could not find out who wanted to do him harm.

[redacted] related the above to his supervisor, [redacted], Area Commander Canal Zone Protective Division, and requested a leave of absence, as he was unable to clearly make a decision on his future under the press of these problems. By this time,

[redacted] was extremely distrought [redacted].

On [redacted], 1977, [redacted], [redacted] Canal Zone Protective Division, contacted [redacted] and informed him that he would be allowed to take a leave of absence.

[redacted] contacted his personal doctor who recommended that he be admitted to Corozal hospital in the Canal Zone for observation and rehabilitation. [redacted]

On the week of [redacted], 1977 the mother of Canal Zone policeman [redacted], was detained, initially arrested and roughed up in her Panama city home and shop, by five agents of the Panama National guard who identified themselves as narcotic officers. [redacted] is Panamanian, and an inhabitant of the Canal Zone.

These agents stated that they had orders to search Mrs. [redacted] home and proceeded to tear the place apart. Finding nothing, they demanded that [redacted] accompany them to her [redacted] shop in another part of the city where they duplicated the above process.

[redacted] is [redacted] years old and lives [redacted] with her [redacted] daughter and [redacted], who was also threatened and roughed up by these agents. Still finding nothing the agents left. [redacted] stated to me that there had been six incidents of this type in the last several months. Leading up to this latest incident, [redacted] was accussed in the local government controlled news media of distributing anti-government propaganda within the Republic of Panama.

Also within three weeks prior to this latest incident involving [redacted] mother, his wife while driving her vehicle on [redacted]

road, was cut-off by a vehicle bearing a Panama license plate number. [redacted] backed up and drove her vehicle into the adjacent [redacted] gas station where the same vehicle cut her off again. On this second exchange [redacted] locked her doors and windows and had the opportunity to recognize [redacted] of the Panama National Guard G-2 section as one of the occupants of the vehicle that cut her off.

[redacted], like myself,and recently [redacted], has long been a subject of harrassment by the Panama government. Like [redacted], [redacted] has been told that he will be killed if he is caught in Panama.

[redacted] and his family and [redacted] and his family have all but given up hope that they will be protected by the United States government against incidents of gangsterism such as the above. Both of these men were given this right to protection by the Congress of the United States, through the Canal Zone Code, title 1, section 31.

respectfully submitted,

William R. Drummond

William R. Drummond

Mr. DRUMMOND. I have been given some information by a member of my union who had extensive contacts in the Republic of Panama. These were social contacts. He happened to go to a friend's house and overheard a conversation dealing with a possible coup in the Republic of Panama.

Not wanting to become involved, he immediately left. However, he indicated he observed what appeared to be a Guardia Nacional vehicle in the area monitoring the meeting that he inadvertently came upon.

In any case, during that same week, his employee was stopped in the Republic of Panama, and the G–2 agents asked the employee where he was and so forth, in rather profane words. They identified him and they, in effect, told him that if they catch him in Panama they are going to kill him.

This is an American citizen I am referring to. American citizens in the Canal Zone or in Panama do have a right, under Panama law and U.S. law to associate. It is difficult in these times to associate with anyone in Panama who is not against the government.

What I am saying here is this. There is growing dissension. When U.S. employees become involved over the years with a certain family or a friend, this friend normally brings up the conversation about the fact that if this American is caught in the G–2 monitoring processes, then he is immediately suspect of a coup, of a conspiracy; and, as such, he is intimidated by the G–2 if he goes into the Republic of Panama. It doesn't happen to every single employee in the Canal Zone, but it happens to 1, 2, 10, 20, 50.

In any case, they told [name omitted] to inform this gentleman that when they catch him in Panama, they are going to kill him. To quote the statement, "The ants will feed on his eyes."

After receiving this revelation, this employee was obviously distraught. He related this to me and he was at a loss to know which direction to go: Get out of Panama, get out of the Canal Zone, go to the States, give up all of his social contacts, all of his employee equity that he had built up through the years and start all over again, or to stay and hope that they are just bluffing and that it is only an intimidation tactic used to let him know that they know, et cetera.

It is kind of a hard thing for an employee to assess, especially when this employee didn't even know who was trying to get rid of him and why. The only thing he could think of was this one particular meeting which he had nothing of substance to do with.

INCREASE IN INCIDENTS

Mr. CROMMELIN. Do you feel that incidents of intimidation have increased in Panama over the last year?

Mr. DRUMMOND. Yes, sir, I do—greatly.

Mr. CROMMELIN. How long did you say you have lived in the zone?

Mr. DRUMMOND. About 13 years.

Mr. CROMMELIN. When you first got down there, did problems of this sort happen with any frequency?

Mr. DRUMMOND. To my knowledge, they did not. I got there in 1964. I was in the military prior to that. I was a policeman in 1964.

There was the general treaty negotiations going on at that time. The instability caused by the rejection of the treaty, et cetera, was there.

There was the problem with the treaty itself, the overthrow of the elected officials, the government at that time. And, there was a period of stability, or, I should say, instability when there was a turnover of heads of government.

But in the last 3 or 4 years, there has been an enormous increase in intimidation of both non-U.S. and U.S. employees in the Canal Zone and in Panama.

If I may, I would like to continue.

On the week of July 5, 1977—and these are only specific examples. I could have stacked up examples this high [indicating] over the last 5 years, and I probably have in the Panama Subcommittee in the House through correspondence.

On the week of July 5, 1977, the mother of a Canal Zone policeman, Mr. [name omitted], was detained, initially arrested, and roughed up in her Panama City home and shop by five agents of the Panama National Guard who identified themselves as narcotics officers. Mr. [name omitted] is a Panamanian and an inhabitant of the Canal Zone.

These agents stated that they had orders to search Mrs. [name omitted]'s home and proceeded to tear the place apart. Finding nothing, they demanded that Mrs. [name omitted] accompany them to her women's clothing shop in another part of the city where they duplicated the above process.

Mrs. [name omitted] is __ years old. She lives alone with [name omitted] and [name omitted] who was also threatened and roughed up by these agents. Still finding nothing, the agents left. Mrs. [name omitted] has stated to me that there had been at least six prior incidents of this type in the last several months. Leading up to this latest incident, Mrs. [name omitted] was accused in the local government-controlled news media of distributing antigovernment propaganda within the Republic of Panama.

Also within 3 weeks prior to this latest incident involving Mr. [name omitted]'s mother, his wife, while driving her vehicle in the Canal Zone, was cut off by a vehicle bearing a Panama license plate number. Mrs. [name omitted] was able to identify the occupant as an agent of the Panama G–2.

This incident occurred in the Canal Zone.

These people, as well as U.S. employees, have the same rights of protection under the laws of the United States, especially policemen. If they can't enforce the law freely in the Canal Zone, then they are not going to be able to serve the United States.

Mr. CROMMELIN. It is sort of hard to do that without a judge, I would imagine.

Mr. DRUMMOND. That is correct.

Mr. CROMMELIN. Do you believe the failure to appoint a judge is related to the ongoing negotiations?

Mr. DRUMMOND. I believe so, yes.

I believe that, plus the fact that there hasn't been a board of directors appointed in the Canal Zone. I believe this failure is also related to the treaty negotiations.

BOMBING INCIDENT

Mr. CROMMELIN. You have described several instances. I think the subcommittee will be particularly interested in the incident involving the bombing of your car. Could you describe that for us, please?

Mr. DRUMMOND. Yes, sir.

In late October of 1976, agents of the Panama National Guard's G–2 office set off several bombs within the Canal Zone, on both the Atlantic and Pacific sides of the Canal Zone. A bomb placed at my home caused damage to my car and to the windows of my house. Coco Solo Hospital, on the Atlantic side, was also damaged when several bombs went off in the parking area.

Our Embassy in Panama presented these allegations to General Omar Torrijos who denied that his people were involved. The reaction of our Government, even after having the proof, was "business as usual." Not even the threat to U.S. lives seems to sway our State Department from their preoccupation with treaty negotiations. Torrijos inferred in his reply—and these were all written exchanges that were released in the Panama press—that these allegations would do just that—interfere in the negotiations if the Embassy persisted in this matter.

The matter apparently was dropped.

In my last trip to the States, in order to testify on these type matters, I felt it necessary to resign my position as a Canal Zone policeman because I was refused leave in order to do so.

I would like to put that in its proper context. I mentioned that I have great esteem for the Governor of the Canal Zone, and I do. I don't think he is forceful enough. However, as I mentioned earlier, I felt that I had an obligation to the citizens, and certainly as a representative of employees, to bring out issues that I have mentioned earlier. There have been many of them.

I have done this before the Congress. That is my only format here. I have already gone through appeals, complaints, and what have you with the executive branch. It is like bouncing a ball against a wall. It is not a case where they deny it because of no substance to it. It is a case where they state it was only an overzealous employee of the Panama Government, and we should not make a big thing out of these things.

Mr. CROMMELIN. Do you think the bombing incident was related to or in response to your legal action trying to establish the authority of Congress with respect to disposition of territory in the Zone?

Mr. DRUMMOND. Yes, sir.

I would also like to point out that I believe that the treaty negotiations were stalled to some degree. I believe that was also a factor involved. I think also involved were my activities in influencing the Central Labor Union-Metal Trades Council from supporting the Torrijos government in the present treaty negotiations.

Mr. CROMMELIN. How soon was the bombing incident after you filed your first lawsuit?

Mr. DRUMMOND. I would have to go back in the record and look, but I believe it was only 1 week. At that time, there was enormous press

given to it in the Panama-controlled news media. I was blasted as an anti-Panamanian, a colonialist, and what have you, and an affront to the executive branch for even considering putting this suit which is based on my constitutional rights into the courts to begin with.

I have been given many obscene telephone calls. There was almost a daily diatribe in the news media. Of course, then the bombings took place.

I believe there were a number of factors involved. To go back, when I speak of my forced resignation, I would also like to point out that the Governor refused that resignation. I am still carried as a policeman, a Canal Zone policeman up to today.

When I resigned, I resigned on the premise that I was appealing to the Congress of the United States. In this particular case it was the Appropriations Committee. This was over the same issues—human rights, civil rights. I felt a need to bring out that the executive branch of the United States was not being forceful in protecting employees within the Canal Zone.

Mr. CROMMELIN. Mr. Drummond, I think you have done a superb job of that today.

We are going to have to conclude this hearing because of the schedule. On behalf of the subcommittee and its chairman I commend you for the courageous activities you have undertaken on behalf of U.S. citizens in the Canal Zone. I feel confident your views are representative of their views. It does seem time that the 37,000 or more U.S. citizens in the Zone should be given a voice in negotiations for the disposition of the Zone to the Republic of Panama, a country governed by a military dictator.

I think you have made a valuable contribution to the record of these hearings, and I do thank you on behalf of the chairman and members of the subcommittee.

At the end of the record of the proceedings of today and as a part thereof we will insert the written statement of Adm. John S. McCain, Jr., formerly Commander-in-Chief-Pacific, and a letter, dated July 28, 1977, from Miss Kitty L. Reynolds, State president, Virginia Women for Constitutional Government.

The subcommittee will be in recess until September 8, 1977 or until the call of the chairman.

[Inserted material follows:]

STATEMENT BY
ADMIRAL JOHN S. McCAIN, Jr., USN, RETIRED
Before
The Subcommittee on Separation of Powers
Committee on the Judiciary
U. S. Senate

JULY 29, 1977

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

My name is John S. McCain, Jr., Admiral, U.S. Navy, retired. My last active duty was as U.S. Commander-in-Chief, Pacific, 1968-72, which was during the height of the Vietnam war. My previous experience included duty with submarines based at Coco Solo, Canal Zone, prior to World War II. Throughout my active career I have been a student of sea power in the defense of the United States. In this defense, the Panama Canal is the strategic center of the Americas and as such a crucial element of U.S. sea power in the current drive for world domination by the USSR. This includes the predominating effect of economic security.

Records show that at the height of the Vietnam war, the Panama Canal transited U.S. Government vessels as follows: in Fiscal 1968 a total of 1,505; in 1969, 1,376; and in 1970, 1,068. These vessels consisted largely of combatant units and logistic support groups for the U.S. Armed Forces in the war. Had the Panama Canal not been available, the war could not have been effectively conducted.

In my capacity as Commander-in-Chief, Pacific, I worked in close collaboration with the Chiefs of the Army, Navy, Marine Corps and Air Force. I have read the July 22 statement before this Subcommittee by Admiral Thomas H. Moorer and concur fully with his evaluation on the

vital importance of the Panama Canal to our Armed Forces and national survival.

As a student of Panama Canal history, I have long admired the vision of the framers of our Isthmian Canal policy for all sovereign control over the Canal and its protective strip of the Canal Zone territory. Both are closely inter-related and should not be separated or have their sovereign control in any sense whatsoever diluted as is now being proposed.

To surrender one square inch of the Zone territory, as shown by experience, will only lead to future greater demands and eventual loss of the Canal itself to a small and weak country that could not possibly stand up against the pressures of stronger powers. Soviet Russia and the communists, both terms synonymous, are making every effort to gain control of the Canal.

Mr. Chairman, I have also read the recent letter to the President by four greatly distinguished former Chiefs of Naval Operations. My experience as Commander-in-Chief, Pacific, fully justifies the views that they so powerfully expressed.

The United States is now facing the gravest period in its history. It has suffered successive defeats all over the world and the loss of sovereign control over the Canal Zone would result in transforming the Caribbean and Gulf of Mexico into Red lakes, with grave consequences in Latin America.

One of our country's outstanding strategists, General Thomas A. Lane, a student of Panama Canal problems with Canal Zone experience, foresaw what is now transpiring. In an editorial in the Strategic Review, he made this significant statement:

"The belief of some officials that U.S. operation and defense of the Canal under treaty provisions, instead of under sovereign authority, would eliminate the friction of recent years is a calamitous misjudgment of the present scene. Marxist-Leninist subversion would be intensified by such a retreat. Friction would mount and the U.S. position would become intolerable. The United States would be compelled to use force against the Republic of Panama, or to withdraw and allow the Canal to be operated and defended by another (power). That is a prospect which no President should impose on his successors." (Strategic Review, Winter 1974, p.5.)

The Canal Zone sovereignty question transcends all partisan considerations and must be decided on the highest plane of national interest if our U.S. future is to be safeguarded. Under no circumstances should U.S. sovereign control over either the Panama Canal or the Canal Zone be diluted.

In Latin America, the national qualities that win respect are strength and decisiveness. It is time for our country to stop COWERING, cringing and to act the part of a great and powerful nation with a positive and constructive program. We have nothing to be ashamed of. Nor need

we apologize for all the foreign aid and technical assistance we have given to other nations beginning with the Marshall Plan. I would urge in the interest of hemispheric security the following:

1. Emphasis by the Senate and House of Representatives on U.S. sovereign rights, power and authority in perpetuity over the U.S. Canal Zone and Panama Canal (H.Res. 92);

2. Major modernization of the existing Panama Canal under existing treaty power for "expansion and new construction" (H.R. 1587);

3. Authorization for the election by U.S. citizens residing in the Canal Zone of a non-voting delegate in the Congress (H.R.1588);

4. Reactivation of the pre-World War II U.S. Naval Special Service Squadron with homebase in the Canal Zone; and

5. Stationing of a unit of U.S. submarines at Coco Solo, Canal Zone. This force served a worthwhile purpose when it existed. It had a stabilizing effect and would do so again. It may be needed sooner than we like to think.

Some day a Soviet naval task force will be operating in the Caribbean-Gulf area. This will happen in the not-to-distant future. In the area of international relations, we must be prepared in peace in order to be prepared to fight in war.

6. The Naval Air Station at Coco Solo should be retained and we need the return of Old France Field, which was recently leased without prior congressional authority to Panama for 15 years. We need these two air facilities to increase U.S. air capability in the Gulf-Caribbean area in lieu of the shortage of aircraft carriers for the area.

The Hon. James B. Allen, Chairman
Subcommittee on Separation of Powers
Senate Judiciary Committee

July 28th, 1977

Mr. Chairman and members of the subcommittee, I am Miss Kitty L. Reynolds, a resident of Arlington, Virginia, and at the present time am state president of Virginia Women for Constitutional Government. Women for Constitutional Government deem it the obligation of a free people to preserve those powers the United States Constitution reserves to the states and to the people, and to preserve the constitutional separation of powers of government in the executive, legislative and judicial branches. The organization's national convention was held in Arlington, Virginia in November of 1976, at which time a resolution was adopted, reaffirming its position on the Panama Canal, and urging our representatives in Congress to retain complete control and sovereignty over that vital artery. It is on the basis of the resolution, and the first vice president instituting a petition to Congress drive to save the Canal, that I submit this statement.

The present treaty negotiations are being conducted in pursuance of the February 7, 1974, "Agreement on Principles" signed by United States Secretary of State Henry A. Kissinger, and by Panamanian Foreign Minister Juan A. Tack. This agreement is intended to guide the negotiators in the conduct of negotiations. The agreement identifies the United States interest in the Canal, and how to go about furthering and protecting that interest, which is to make sure that the Canal remains open, that it functions efficiently, and that it remains secure and neutral. The principles enunciated in the agreement include the following:

1. A new treaty shall have a termination date;
2. Sovereignity in what is now the Canal Zone will revert to Panama;
3. Panama will exercise jurisdiction in the Canal Zone;
4. The United States will be responsible for the operation of the Canal for an extended period of time;
5. The lands and waters of the Canal Zone will revert to Panama;
6. Compensation to Panama for the rights which it grants the United States will be increased;
7. The United States will undertake to train Panamanians to run the Canal in order to assume increasing responsibility for its operation;
8. There will be an agreement to assure that the Canal remains neutral, not only during the period the U.S. is responsible for its operation, but also thereafter; and finally,

there will be an arrangement for the U.S. to defend the Canal, that is, the Status of Forces

Arrongement for our traaps there, and Panamo itself will became involved in the defense af the Canal.

According to these guiding principles, Ponama will receive the Conal ond Zone as an outright gift. Our investment in the Canal enterprise is now around $7 billion, but in the proposed treaty not a dallar is to be repaid ta us. Nat anly ore we giving away all of the territory ond praperty there, but any rights exercised by the United States must be gronted by Panama, for which that cauntry will be campensated.

This roises the questian, daes any branch of the U.S. government hove the pawer to give away U.S. territory and property? Article IV, Section 3, Clouse 2, provides that Congress sholl hove power to dispose of and make all needful rules and regulotians respecting the territary or praperty belonging ta the United States. The power to dispose of U.S. territory and property does nat mean that Cangress can give it away, since it is not theirs ta give.

Wresting contral of the Canal from the United States hos been a Soviet objective since 1917, and has long been a key purpose af the Communist revolutionary conspiracy for conquest of the Caribbeon.

Cangressman Daniel Flood, an authority on the Panama Conal and Zone, predicted on June 8, 1967, that if the United Stotes is driven fram the Isthmus that Panama itself will lase cantral of the Conal immediotely because of Soviet domination. Cong. Recard – House 6942 & 6943.

The following quate is taken fram an article by the Hon. Spruille Braden, Saviet Threat ta the Ponama Conol. "In Cuba, Soviet missile sites, undergraund submarine pens (which can be entered by submerged and unseen U-baats), and the presence of several thousand Russian traops make that island an ideal springboard fram which to launch an attach on Panamo – and for that matter the U.S.A., thus fulfilling the Kremlin's langstanding ambition to control every main waterway af the world .... and abave all the Panama Canal!

That Moscow is determined eventually ta grab Panama is further confirmed by on article by Major Sergei Yuworov of the Saviet Army published in Red Star, the Saviet military argan, and reproduced in the Cuban magazine Bahemia. He wrote: 'Due to its privileged location as the juncture between Sauth America and the rest of the continent, including the Conol that permits United Stotes warships ta aperate simultaneously in the Atlantic ond Pacific, it – the Canal Zone – must be considered by the Soviet Union as a Priarity Zone.' A second zone (fram which to attack Panama) is the Centrol American isthmus, located to the narth of Panoma. The Canal itself can be attacked as well fram Calombia."

As a third alternative Yuworov points to: ' ... converting Cuba, and implicitly Puerto Rico, into bases from which Moscow's plans can be consummated." Spruille Braden was former U.S. Ambassador to Argentina, Bolivia, Colombia and Cuba, and is considered a leading authority on that area.

Congressman Flood is still of the same conviction as of 1967, that Panama would be unable to defend the Zone and Canal. He submitted a resolution to the House on January 10, 1977, (H. Res. 92) which reads in part:

Whereas the proposed surrender of United States sovereign control over the zone and canal to Panama, which is unable to defend them, would invite the Union of Soviet Socialist Republics to establish its power still more firmly in the strategic center of the Americas and threaten the operations and projected modernization of the Canal; and

Whereas such a takeover would transform the Caribbean-Gulf of Mexico basin into a strategic Soviet stronghold; and

Whereas the Congress of the United States is invested with constitutional responsibilities to provide for the common defense and general welfare of the United States, to regulate commerce with foreign nations, to raise and support armies and provide and maintain a Navy, to make all needful rules and regulations respecting the territory of the United States, and to make all laws necessary and proper for carrying into execution these and other powers, all of which denote that it is the solemn duty of Congress to safeguard the interests of the people of the United States in the canal and zone:

Now, therefore, be it

Resolved, That it is the sense of the House of Representatives of the United States of America that –

(2) there be no relinquishment or surrender of any presently vested United States sovereign right, power, or authority in the Canal Zone without prior authorization by the Congress; and

(3) there be no recision or cession or other divestiture of any United States territory or property in the Canal Zone, tangible or intangible, to Panama or any other entity, country or international organization, without prior authorization by the Congress (House and Senate), as provided in Article IV, Section 3, Clause 2, of the U. S. Constitution.

In summary, savereign contral af the Canal and Zane is essential for the follawing reasons:

1. Continued efficient aperation af the Canal is vital ta our ecanamy, since 70% af traffic either originates ar terminates in United States ports;
2. Salvage af pipelines acrass the Isthmus, naw endangered, for the shipment of Alaskan ail;
3. An unstable and dangeraus situation on the Isthmus will arise if we give up control;
4. Inability af Panama ta defend the Canal and Zone, which will permit the Kremlin ta realize its langstanding ambitian to cantrol every main waterway of the warld, and above all, the Panama Canal,
5. The Canal represents a vital partian of our United States naval and maritime assets, all af which are absalutely essential for free world security;
6. Sovereign control of the Canal and Canal Zone are indispensable during periads of tensian and canflict.

We owe Panama nothing. The Republic of Panama was compensated by payment of a purchase price of $10 million in 1904. We bought every square inch of privately owned ground and water rights – even squatter claims – lying within the Zone. We cleared the jungle, and rid it of malaria bearing mosquitoes to make it safe for man's habitation.

Others had dreamed af a waterway across the Isthmus, and attempts were made to construct ane, but it was American ingenuity that did the job. It took ten years of labor to build the Canal, sometimes emplaying as many as 40,000 laborers. Let them call us imperialists, or colonialists. These names, although intended ta be opprobrious, do nat minimize this glorious achievement, which has so greatly benefitted mankind.

The Constitutional questian which has arisen aver the disposition of United States territory and property by treaty may stop the State Department's planned giveaway of the Panama Canal and Zone. In the meantime, the negatiators can reflect on the dangers to our sovereignty in giving away our canstitutionclly acquired territory.

I thank yau for the apportunity ta submit this statement.

Respectfully yaurs,

Kitty L. Reynolds

Dated: July 28, 1977

Miss Kitty L. Reynolds, State President,
Virginia Wamen far Constitutional Government.

PANAMA CANAL STATISTICS

THE WASHINGTON POST *Thursday, August 11, 1977*

The Canal by the Numbers: A Saga Told in Statistics

Length: 50.4 miles

Cost: $387 million for initial construction, roughly $330 million in capital investment since 1914

Military investment in Canal Zone: $5.3 billion (source: Center for Defense Information)

Number of U.S. bases in zone: 14

Size of zone: 648 square miles

U.S. personnel: 9,500 military, 3,500 zone employees, 25,000 dependents

Population of Panama: 2 million

U.S. Payments to Panama: $10 million initially and $250,000 annualy until 1936; $430,000 annually to 1955; $1.9 million annually to 1974; $2.3 million annually since 1974. Total: about $70 million. Another $25 million paid to Colombia as compensation for Panama's loss.

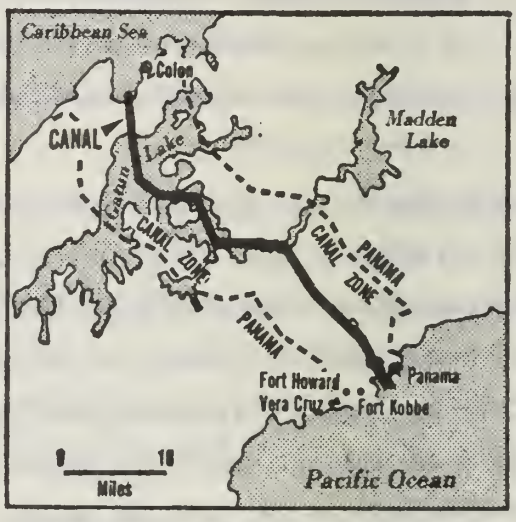
Canal Zone organization: self-supporting agency of the U.S. government

Zone revenue: $250 million in FY 1976, a deficit of $7.6 million under operating costs. A $24 million deficit is projected for FY 1977.

Annual canal usage: 14,734 transits in FY 1975, 70 per cent of them bound for U.S. ports, carrying cargo that is 1 per cent of U.S. gross national product

Ship transit time: 8 to 14 hours

Savings over Cape Horn route: 30 days, 8,000 miles, about 10 times canal toll fee



The Washington Post

Largest user: Tokyo Bay, 950 feet by 106 feet, 1972

Largest toll: $40,396.50 by German container ship Hamburg Express, 1972

Average toll: $7,175

Smallest toll: 36 cents, by explorer Richard Halliburton who swam the canal in 1928.

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